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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 292

[redacted] MURRAY ESTEP, PETITIONER,

vs.

UNITED STATES OF AMERICA

[redacted] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[redacted] FILED AUGUST 2, 1945.

[redacted] OCTOBER 8, 1945.

UNITED STATES CIRCUIT COURT OF APPEALS

THIRD CIRCUIT

No. 8810

THE UNITED STATES OF AMERICA
Plaintiff-Appellee

v.

WILLIAM MURRAY ESTEP
Defendant-Appellant

APPEAL
FROM A JUDGMENT OF THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

APPENDIX
for Appellant's Brief

HAYDEN C. COVINGTON
Counsel for Appellant

Relevant

Docket Entries

[See pages 277-278 for *all* docket entries.]

1944

Sept. 20, True Bill.
" 20, Indictment filed.
Oct. 5, Defendant pleads NOT GUILTY.
Nov. 22, Motion to quash indictment filed.
Dec. 6, Hearing on motion to quash indictment before Schoonmaker, J.
" 6, Motion denied; hearing concluded.
" 6, Hearing Memo. filed.
" 7, Trial opens at 10:10 A.M. before Schoonmaker, J.
" 7, Defendant's requested Instructions Nos. 1 to 28 inclusive filed.
" 8, Trial Memo. filed.
" 8, Stipulation to receive a majority verdict and waiving the right of a unanimous verdict, filed.
" 8, The jury find defendant guilty as indicted; this verdict is rendered in pursuance of a stipulation of the parties filed herein to the effect the issue of the guilt of the defendant may be decided by a majority verdict of the jury. Verdict filed.
" 20, The sentence of the court is defendant be placed in a penitentiary for five years; no fine or costs. (S) counsel
" 20, Notice of and grounds for appeal filed.
" 20, Assignments of error filed.
" 21, Copies of notice of appeal mailed to Mr. Rowland and Mr. Mashank.
" 21, Transcript of testimony filed by leave of Court.

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Indictment

Selective Training andService Act of 1940—
Title 50 War, Appendix 311, United States Code

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Of September Term, A.D. 1944.

Western District of Pennsylvania, ss:

The Grand Jurors of the United States of America, now inquiring in and for the Western District of Pennsylvania, after being duly impaneled, sworn and affirmed and charged, at the term of said Court now pending, upon their oaths and solemn affirmations, respectively do present, that WILLIAM MURRAY ESTEP hereinafter referred to as the defendant, late of said district, heretofore, to wit, on and about the twelfth day of September, in the year of our Lord, one thousand nine hundred and forty-four, at Pittsburgh, in the County of Allegheny, in the Western District of Pennsylvania, and within the jurisdiction of this Court, having, in pursuance of the Selective Training and Service Act of 1940, as amended, become a registrant with Local Board No. 4, located at Canonsburg, Pennsylvania, which said Local Board was duly appointed and acting for the area in which he, the said defendant, is a registrant, did become delinquent, in this; that he, the said defendant, did unlawfully, wilfully and knowingly fail and refuse to submit to induction; he, the said defendant, having no valid reason for having failed and refused to perform the duty as aforesaid, in violation of directions given to the said defendant under rules and regulations made pursuant to the Selective Training and Service Act of 1940 as amended; contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

Charles F. Uhl
United States Attorney

Motion to Quash the Indictment

Now comes the defendant, William Murray Estep, by his attorney, Hayden C. Covington, and moves the court to quash the indictment and to order the prosecution dismissed because:

The indictment fails to state an offense against the laws of the United States.

The indictment is insufficient to state an offense.

The indictment fails to definitely and sufficiently advise the defendant of the nature of the offense charged.

The criminal sanctions clause of section 11 of the Selective Training and Service Act, and Regulations thereunder, requiring the defendant to comply with the order made have been construed by the courts so as to require the defendant (who has been examined on a preinduction physical examination and declared acceptable and who has exhausted his administrative remedies by complying with and submitting to the selective process which was completed before the order to report for induction was issued, and who thereafter reports for induction but who refused to submit to induction at the Army Reception Center) as a condition precedent to testing the invalidity of the classification to submit to induction pursuant to the illegal order upon which the indictment is based, a vain and needless thing or act. The construction of the Act and Regulations penalizes the defendant for having failed to submit to induction by denying him the right to show that the order is invalid because of defendant's exemption from duty under the Act as a minister of religion, thus making said Act and Regulations thereunder unconstitutional and void for each of the following reasons, to wit:

a) They constitute a bill of attainder, contrary to clause 3 in section 9 of Article I of the Federal Constitution.

b) They transfer and surrender the judicial power of the United States Courts in the trial of a criminal case from said courts to the draft boards, so as to permit said boards to determine the guilt of the defendant, a judicial function, contrary to Article III of the Federal Constitution.

c) They abridge the right of the defendant to have a judicial trial and deny him the right to prove his innocence, and also his right to be heard in his defense, contrary to the due process clause of the Fifth Amendment to the Federal Constitution.

d) They deny and abridge the right of the defendant to a trial by jury and the privilege of having a jury pass on whether the defendant owes a duty because exempt and whether he is guilty of failing to perform a duty, contrary to the provisions of the Federal Constitution guaranteeing a trial by jury and to the Sixth Amendment forbidding the denial thereof.

e) They permit conviction without evidence or upon hearsay evidence and deny the defendant the right of counsel in his defense contrary to the Fifth and Sixth Amendments to the Federal Constitution.

f) They permit the draft boards to determine the guilt of the defendant who is exempt and could not be found guilty of violating a duty under the Act, and thereby the Act and Regulations are converted into an ex post facto law, contrary to clause 3 in Section 9 of Article I of the Federal Constitution.

WHEREFORE, the indictment being insufficient and the law being unconstitutional and void as construed, it will not support a prosecution. Accordingly, the indictment

should be quashed and dismissed with an order discharging the defendant from all liability. Defendant prays for such other and further relief to which he may justly be entitled in the premises.

Order Overruling Motion to Quash

On the 6th day of December 1944 came the United States Attorney and the defendant, appearing in proper person and by counsel, and

Upon announcement of ready for trial, defendant requested leave of Court to urge a previously filed motion to quash the indictment on the ground of the unconstitutionality of the statute and regulations promulgated thereunder. The Court granted leave to urge said motion, which was fully argued and each ground thereof was considered by the Court, and the Court was of the opinion that the statute and regulations are not unconstitutional as charged by defendant. Accordingly, the motion to quash should be, and is, hereby overruled, to which action of the Court defendant excepted.

United States District Judge

Transcript of Official Notes of Testimony

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. E-4538-Criminal

UNITED STATES OF AMERICA
v.
WILLIAM MURRAY ESTEP

And now, Thursday, December 7, 1944, at 10:00 o'clock A.M., the above entitled cause came on for trial before Hon. F. P. Schoonmaker, Judge, and a Jury, at Pittsburgh, Pennsylvania.

Counsel Present:

For the Government: George Mashank, Esq., Assistant U.S. Attorney;
For the Defendant: Hayden Covington, Esq., (117 Adams Street, Brooklyn, N. Y.)

(Jury sworn).
(Mr. Mashank opened to the jury on behalf of the Government).

JOHN W. McNUTT, a witness produced on behalf of the Government, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Mashank:
Q. What is your full name? A. John W. McNutt.
Q. Where do you live, Mr. McNutt? A. Canonsburg.

Q. What is your occupation or profession?

A. Clerk of Local Board 4, Washington County.

Q. You are the chief clerk, I believe?

A. That is right, sir.

Q. How long have you been such clerk? A. Since the beginning of the Board, October 23, 1940.

Q. As such clerk you have custody of all the records of the registrants under the jurisdiction of your board?

A. I do, sir.

Q. And is the defendant in this case, William Murray Estep, a registrant of your Board? A. He is.

Q. When was he registered? A. Registered June 30, 1942.

Q. And after he was registered was he sent a questionnaire? A. He was sent a questionnaire on August 12th of 1942.

Q. And was that questionnaire returned to your Board?

A. It was returned to the Board on August 22, 1942.

Q. Do you have that questionnaire with you?

A. I do, sir. (Witness produces paper).

(Said paper marked Government Exhibit No. 1).

Q. I show you Government Exhibit No. 1, and ask you what it is. A. That is the Selective Service questionnaire form 40.

Q. And whose questionnaire is that?

A. William Murray Estep.

Q. Defendant in this case? A. That is right, sir.

Mr. Mashank: I offer in evidence Government's Exhibit No. 1.

Mr. Covington: We have no objection.

Q. Now, Mr. McNutt, after that questionnaire was returned to your Board was the registrant classified?

A. The registrant was classified in Class 1-A on October 3, 1942.

Q. And did he take an appeal from that classification?

A. He took an appeal from that classification.

Q. What was the action of the Appeal Board, if you know? A. The Appeal Board sustained the Local Board.

Mr. Covington:

Q. When? A. On August 2, 1944.

Mr. Mashank:

Q. Then the file was referred to your Board—or remanded to your Board, rather? Is that right?

A. That is right.

Q. And what was the final classification of the registrant? A. I-A.

Q. After he was given the final classification 1-A, was he sent up for a pre-induction physical examination?

A. He was sent up for a pre-induction physical examination prior to the appeal.

Q. And he reported for that, I suppose? A. That is right; on May 5th—I will take that back, it wasn't May 5th. On the 24th of April he took his pre-induction physical examination.

Mr. Covington:

Q. What year? A. 1944.

Mr. Mashank:

Q. At any rate, he was given a final classification of 1-A. Is that right? A. That is right, sir.

Q. What action was taken after that by the Board with reference to the defendant? A. That is, after the pre-induction physical examination the appeal was filed with the Appeal Board.

Q. After the file was remanded to the Board and the Board continued his classification of 1-A—is that right?

A. That is right. And then the file was recalled to Harrisburg, to State Headquarters.

Q. And do you know why that was? A. The only reason I can imagine is because Mr. Estep contacted State

Headquarters with his case.

Q. Well, so far as you know, it was referred to Harrisburg? A. That is right.

Q. And was he ordered to report for induction?

A. He was ordered to report for induction, yes, sir.

Q. Do you have a copy of the notice that was sent to him to report for induction?

A. I have. (Witness produces paper).

(Said paper marked Government Exhibit No. 2)

Q. I show you Government's Exhibit No. 2, and ask you if that is a copy of the notice that was sent to the defendant to report for induction. A. It is, sir.

Q. When was that notice sent? A. It was sent on September 1, 1944, to report for induction on September 11, 1944.

Q. And where was it sent? A. 195 Summit Avenue, Canonsburg, Pa.

Q. That is the address the Board had for him at that time? A. Yes, sir.

Q. And pursuant to that notice, did the defendant report for that purpose, in compliance with the notice that was sent to him? A. He reported 7:30 A.M., the morning of September 11.

Q. And he was sent with other registrants to the induction station? A. He was sent by himself to the induction station.

Q. You know that as a matter of fact?

A. Yes, sir; I rode the same train with him.

Q. And do you know that he reported for induction at the induction station? A. I can't say that, sir, because I saw him get off the train at Fourth Avenue; that is the last I saw of him.

Mr. Mashank: I offer in evidence Government's Exhibit No. 2.

Mr. Covington: I have no objection.

CROSS EXAMINATION

Mr. Covington:

Q. Mr. McNutt, you said his appeal was filed with the Board of Appeal after the pre-induction physical examination? A. That is right, sir. The law had changed in the meantime.

Q. When was the first time that his case went to the Board of Appeal? A. The first time the Board of Appeal acted on his case was August 2, 1944.

Q. On August 2d I understand they acted on the appeal; but the point I am getting at, when did you—or the Local Board—refer the case to the Board of Appeals, pursuant to his notice of appeal?

A. I haven't any record of the actual date it was sent to the Board of Appeal.

Q. Have you nothing in your file to indicate the date that that file was received by the Board of Appeal?

A. No, I don't; there is nothing in the file to indicate when it was received.

Q. Do you have anything in there to indicate when it was mailed to the Board of Appeal? A. No, I don't,—Wait a minute.

Q. Do you know of your own knowledge when it was mailed to the Board of Appeal? A. Yes, I do, sir—I will take that back. It was mailed to the Appeal Board on July 28, 1944.

Q. And that was the first time that the Board of Appeal received this file? A. That is right, sir

Q. And when did Mr. Estep take his appeal?

A. On October 27, 1942.

Q. Why was it that you were so long in forwarding his case to the Appeal Board?

A. This case, the file was misplaced in our office.

Q. By whom? A. By either myself or some of the clerks I have in my employ.

Q. And when did you find it? A. It came to light at

the time his brother's case came before the Federal Court.

Q. And during that time his file was lost?

A. That is right, sir.

Q. Now, did you lose any papers out of his file?

A. No, sir.

Q. You lost none. Is that right? A. That is right, sir.

Q. May I have the file?

A. (Witness hands file to counsel for defendant).

Q. Do you recognize that letter (handing paper to witness)? A. Yes, sir.

Q. Do you recognize the carbon copy that is attached to it? A. Yes, sir; of my assistant clerk.

Q. What does the letter say about the reason for the—

Mr. Mashank: Wait just a moment. That is objected to. The letter speaks for itself; and furthermore, as being improper cross examination.

Mr. Covington: Just a moment. I haven't finished the question.

Q. Is it not a fact that the Board stated to the Appeal Board that the delay—

Mr. Mashank: Just a moment. You are reading from the letter.

Mr. Covington: It doesn't matter.

Mr. Mashank: It does matter.

Mr. Covington: Well, let me ask the question,—

Mr. Mashank: If the Court please, I object to his reading from a letter.

The Court: Counsel may come to side bar.

Mr. Covington (at side bar): I ask, "Is it not a fact that the delay in this case was through an oversight in the office, on the part of the office force?"

The Court: Suppose it was. What bearing does that have in this case?

Mr. Covington: He is on cross examination and he has testified—

The Court: I know he is on cross examination, but you should cross examine on the matters which have some relevance to this case.

Mr. Covington: That is the point.

Mr. Mashank: There is nothing relevant in this thing.

The Court: There is nothing relevant at all.

Mr. Mashank: He has already admitted it was an oversight. What is the difference? No harm has been done.

The Court: No harm has been done. It has nothing to do with the merits of this case.

(Group of papers marked Defendant's Exhibit "A").

Q. I show you what is marked Defendant's Exhibit "A", and ask you to please explain what that is and when it was filed with the Board.

A. It is a letter from Mr. Estep as of May 23, 1944, relative to submitting copies of papers that were purportedly not in his file.

Q. And when was it filed? A. It was filed May 23d; it was received by us on the 24th.

Q. And it is in his file. Is that not correct? A. It is in his file, yes, but it is not a part of his file.

Mr. Covington: I offer that.

Mr. Mashank: We object to it, as being the wrong time to offer it, this being cross examination.

Mr. Covington: Even so it is proper, if Your Honor please, to offer this as our evidence, because this witness is the clerk of the draft board, and this is the only

time he will be on the witness stand.

Mr. Mashank: No; this man is on cross examination.

Mr. Covington: The entire draft board file should be in evidence, as I understand it, under the rules; and he just took part of the file out, and the law requires he put all of it in, and we offer the entire draft board file.

Mr. Mashank: We object. I don't think this is the proper time to do it.

The Court: No, I think this is not the proper time to do it. You can put it in in your case, and the merits of receiving it in evidence will be considered.

(Card marked Defendant's Exhibit "B").

Q. I show you Defendant's Exhibit "B", and ask you what it is. A. That is Occupational Questionnaire No. 311.

Q. And when was it filed with the Board?

A. On August 20, 1942.

(Papers marked Defendant's Exhibit "C").

Q. I show you Defendant's Exhibit "C", and ask you to explain what that is, where it came from. A. It came from Mr. Estep. It is a letter from the Watchtower Bible & Tract Society.

Q. Attached to it is what? A. Attached to it is a statement of Mr. Estep.

Q. Dated when? A. There is no date to it.

Q. And attached to that statement— A. Attached to that is a "Consolation" magazine, issue of October 30, 1940.

Q. And where did those papers— Are they a part of the file? A. They are, sir.

(Papers marked Defendant's Exhibit "D").

Q. I show you Defendant's Exhibit "D", and ask you to explain what that is. A. It is a request for a hearing before the Board.

Q. And attached to it is what? A. Attached to it is a copy of the statement of the preceding instant.

Q. What else? A. Also a copy of the statement of the Watchtower Bible & Tract Society and copy of "Consolation" magazine, issue of July 9, 1941.

(Paper marked Defendant's Exhibit "E").

Q. I show you Defendant's Exhibit "E", and ask you to explain what that is. A. Special form for conscientious objectors, DSS Form No. 47.

Q. Found in his file? A. Found in his file, yes, sir.

Q. Dated what? A. Returned October 17, 1942.

(Paper marked Defendant's Exhibit "F").

Q I show you Defendant's Exhibit "F", and ask you to explain what that is. A. Transcript of testimony in the hearing in this case held October 21, 1942.

(Paper marked Defendant's Exhibit "G").

Q. I show you Defendant's Exhibit "G", and ask you to explain what that is. A. It is a copy of a letter signed by myself, addressed to Mr. Estep, under date of October 22, 1942, advising him that the Board had rejected his request for a change of classification.

Q. And what is the date of it? A. October 22, 1942.

(Papers marked Defendant's Exhibit "H").

Q. I show you Defendant's Exhibit "H", and ask you to identify that.

A. It is a letter of appeal from Mr. Estep, dated Octo-

ber 27, 1942, and also a copy of a letter of October 30th from myself, asking Mr. Estep to come to the office and sign the letter of appeal, which had not been signed.

(Papers marked Defendant's Exhibit "I").

Q. I show you Defendant's Exhibit "I", and ask you to explain what that is.

A. It is a copy of a letter—I mean, it is a letter from Mr. Estep, dated February 22, 1944, submitting in blank a duplicate copy of special form for conscientious objector, No. 47, which had been sent him to be filled out because the other one had been misplaced.

Q. When was it that Mr. Estep's file was lost, if you know—or became misplaced? A. I can't tell you the date it was misplaced. It was some time after his hearing in October, 1942.

Q. Well, how soon after that? Do you keep a record of the cases in which appeals are taken, and try to see that the papers are forwarded to the Appeal Board?

A. We do; we keep a copy of the appeals as they are filed.

Q. All right. When Estep took his appeal you naturally had his case for forwarding to the Appeal Board, didn't you, set aside? A. Yes, sir.

Q. Now then, do you know approximately when it was that you lost the Estep file? A. Well, I would say approximately November of 1942—November or December of 1942 it was misplaced.

Q. Was anything received from anybody after the Estep appeal which called your attention to the Estep file, after they had taken an appeal? A. Nothing except himself coming into the office one day.

A. When was that? A. Shortly after he had filed his appeal.

A. And did you lose the file A. No, the file was still in evidence.

Q. Now, after Mr. Estep came did anything else happen that drew your attention to the file? A. Not until the early part of this year.

Q. In other words, from the time that Estep came in until the early part of this year nothing happened around your Board that drew your attention to his file. Is that correct? A. Yes, sir.

(Papers marked Defendant's Exhibit "J").

Q. I show you Defendant's Exhibit "J", and ask you to identify that. A. It is an anonymous postcard asking why Mr. Estep had not been inducted.

Q. Now, what is the date of it? A. December of 1942.

Q. Now then, you found his file to put that in his file in December, 1942. Explain to the jury why his file was not forwarded to the Appeal Board. Can you explain that?

A. We can file the appeal any time I have time to write up the argument to the Appeal Board.

Q. You made no argument to the Appeal Board—

A. Yes, sir.

Q. (Continuing—you forwarded the file to the Appeal Board. That is your duty under the law. A. We have a right to set forth facts in the case, too, by letter.

Q. Now, he took the appeal in October, 1942, didn't he?

A. That is right.

Q. And you, under the law, are supposed to promptly file that file with the Appeal Board, aren't you?

A. We are, as soon as we can get around to writing the statement.

Q. And after that Mr. Estep came in to see you about his file, did he not? A. No, he came in to see me before that time; between the time of the filing of the appeal and the time the file was misplaced.

Q. That is what I want to get. What did he come to see you about? A. He wanted to submit some affidavits.

Q. And what did you tell him? A. I wouldn't accept them.

Q. Why wouldn't you accept them? A. Because he hadn't any right to file them. His case had come before the Local Board and been considered by the Local Board.

Q. Mr. Clerk, you told him, did you not, that his file was before the Appeal Board? A. I might have told him that, yes.

Q. Then you told him a lie? A. Possibly.

Q. Why did you tell him a lie?

Mr. Mashank: Now, if the Court please, I object to any further testimony or cross examination along this line. There is nothing material coming out of it. The witness—the clerk—admits that the file was lost or misplaced. The file is here, there were no papers lost; there hasn't been anybody harmed.

The Court: There is nothing in this case involved, so far as I can see, with reference to the proceedings before the Appeal Board. This court has nothing to do with that phase of the matter, and it has no evidential value one way or the other.

Mr. Covington: I take this position,—that this man is a witness brought here by the Government, and his integrity and credibility as a witness are involved, regardless of what he has testified to. Moreover, I have the right to cross examine this witness with reference to the material issues in defense to the indictment. Now, my purpose in pursuing this line of cross examination is for the purpose of testing his credibility and to show that he is a part—that he and other members of the draft board conspired to violate this defendant of his procedural and constitutional rights by injecting prejudicial statements, as this letter shows (indicating), into the Board at a time when he says the file was lost.

The Court: What do we have to do with that?

Mr. Covington: We have a lot to do with that. The credibility of this witness, whether or not he is a truthful witness, is involved, for one thing. And the other thing is, we take the position that this Board and this man conspired together to violate this defendant's constitutional rights to have a fair hearing before the Board and to have his case considered in a fair light before the Appeal Board. That is the purpose of this cross examination. And it is material and relevant as a defense to the indictment, even if it is cross examination.

Mr. Mashank: Now, if the Court please, I object to any further speeches along this line, this "grandstanding". This witness has testified to the defendant's registration, to the fact that he filed a questionnaire, to his classification, to the fact that he was sent a notice to report for induction. That is the material part of his testimony. And if he wants to confine his cross examination to that or try to break him down on those points, it is perfectly all right. But going into immaterial matter, even if he does break him down on immaterial matter, that isn't doing any good to anybody or to this case. So I object to further cross examination along that line.

The Court: We sustain the objection.

Mr. Covington: I take an exception to the ruling of the Court, and as a part of my exception I want to point out—

The Court: Well, it is enough if you take an exception. You don't really need an exception.

Mr. Covington: I understand; but I understand the rule requires me to have my exception in order to prepare the bill of exceptions. And moreover, I am en-

titled to show what this line of cross examination would develop, as a part of the record, so that the appellate court in reviewing the ruling will be enabled to decide whether or not an error was committed. And that is: If this line of cross examination were pursued, I would develop from this witness that he deliberately withheld this file and deliberately injected prejudice into it by filing a letter, an anonymous letter about this defendant, in December, at a time when he said the file was lost; and that would bear on his credibility. Moreover, I would further show that this witness, as well as members of the Local Board, conspired to violate this man of his procedural rights under the law, as to the Acts and the Regulations.

The Court: Well, the fact that the consideration of his case by the Appeal Board may have been delayed by the loss of this record in the Local Board would have no effect upon the merits of this case one way or the other; it just simply delayed the hearing before the Appeal Board.

Mr. Mashank: And that inured to the benefit of the defendant, because he wasn't called up for induction until a later date.

Mr. Covington: It didn't inure to the benefit of the defendant because the file was lost.

The Court: In this case we are faced with the question only whether he obeyed the order to report for—

Mr. Covington: No, no, we are not concerned with that. The issue is whether or not he submitted to induction, as I told Your Honor yesterday, and under these cases of the Supreme Court decisions we have a right to challenge that. But be that as it may, the point I am trying to develop here is that this witness as well as other members of the draft board conspired to deprive him of his procedural rights; and that is the

purpose of pursuing this cross examination.

Mr. Mashank: If the Court please, I think there ought to be a stop to this sort of accusations. This man has accused the board of conspiracy. But, even so, that is another question, another indictment; and I don't think he should bring it into this case. This Court and this jury cannot pass upon or review the defendant's classification. And all these statements are absolutely irrelevant to the issue here. I think there ought to be a stop put to these accusations.

Mr. Covington: We take exception to the remarks of the District Attorney that the classification is not in issue, because this man's case is entirely different from the ordinary case. He reported for induction.

The Court: We rule that this court has no right to pass on the merits of the classification.

Mr. Covington: All right. I take an exception to that ruling. And at this time I would like to be heard on the issue of whether or not we have a right to challenge—

Mr. Uhl (United States Attorney): If the Court makes an order, ordinarily that is the order of the Court. Now, Your Honor has made an order and then the counsel wants to argue that the Court is wrong in making such an order. That is what the appellate courts are for.

The Court: Well, I don't care to hear counsel.

Mr. Covington: My point is this,—I am here to make a record in this case, and I want to show that the points are properly made, if Your Honor please.

The Court: I have heard you fully.

Mr. Covington: Yes, but that wasn't taken in the record, that was on a motion to quash. And your Honor

yourself said that point wasn't properly presented in a motion, and that was a ground you said you overruled the motion. And I asked Your Honor to carry the motion with the case, and you said no, you were only concerned with the points shown on the indictment and you wouldn't consider the matter at that time. Now, in order that the record may be made clear, for the sake of the record,—

The Court: Just a minute. This witness is called to bring in the record of the draft board, to say whether this man was classified, whether he was ordered to report for induction, and whether he reported for induction. Now, the only thing at issue here so far as the testimony of this witness is concerned is whether or not in fact this defendant was classified, what his classification was, whether he submitted to induction. Now, these matters are entirely outside of that, and neither this Court nor this jury have any right to hear that in connection with the cross examination of this witness.

Mr. Covington: And I take exception to the remarks and statement of the Court, because they are inconsistent to our view of the case, and we think our views are sustained by the Supreme Court.

The Court: Well, I have made my ruling.

Mr. Covington: And you have made remarks in the presence of the jury, and I am taking exception to them, because under the law we feel we are entitled to challenge the classification. The Court has said in the presence of the jury we do not have that right. We take exception to those remarks in the presence of the jury, because that is for the jury to decide themselves. You have made the statement in the presence of the jury we do not have the right to be heard or that the jury does not have the right to consider that.

Mr. Mashank: Furthermore, I think the Court will so instruct the jury in its charge.

Mr. Covington: Well, we haven't got to that point yet.

Mr. Mashank: Well, you have made your exception and it is on the record. Let's go to something else.

Mr. Covington: All right.

(Paper marked Defendant's Exhibit "K").

Q. I show you Defendant's Exhibit "K", and ask you to explain what that is. A. It is an order for pre-induction physical examination, dated April 19, 1944, to report April 28, 1944.

(Paper marked Defendant's Exhibit "L").

Q. I show you now Defendant's Exhibit "L", and ask you to explain what that is. A. It is a copy of the physical examination of the registrant as of April 28, 1944.

(Paper marked Defendant's Exhibit "M").

Q. I show you Defendant's Exhibit "M", and ask you to explain what that is. A. This is a Form 66, an individual appeal record, in the case of the registrant.

Q. When you say "this" you are referring to Defendant's Exhibit "M", which is dated filed with the Board July 28, 1944. Is that right? A. That is right.

(Paper marked Defendant's Exhibit "N").

Q. I show you Defendant's Exhibit "N", and ask you to identify that. A. This is a letter from the registrant, received August 21, 1944.

Q. It is written in longhand, is it not? A. That is right, sir.

Q. Why? Was it written at the Board? A. It was written at the Board office, I presume; that is our—

Q. Do you recall the occasion of that letter being written? A. No, I don't.

(Paper marked Defendant's Exhibit "O").

Q. I show you Defendant's Exhibit "O", and ask you to identify that. A. It is a letter from Pennsylvania State Headquarters, Selective Service, under date of August 10, 1944; and also the reply to that letter, dated August 22, 1944.

Q. Reply from whom? A. From the Local Board.

(Paper marked Defendant's Exhibit "P").

Q. I show you Defendant's Exhibit "P", and ask you to explain what that is. A. It is a letter from the Pennsylvania State Headquarters, dated August 25, 1944, relative to the case of the registrant.

(Paper marked Defendant's Exhibit "Q").

Q. I show you Defendant's Exhibit "Q", and ask you to explain what that is. A. It is a letter from the registrant dated August 30, 1944, requesting that his case be delayed until action by State Director.

(Paper marked Defendant's Exhibit "R").

Q. I show you Defendant's Exhibit "R", and ask you to identify that. A. It is a copy of a letter written by myself to the registrant under date of September 6th, advising him that he had been ordered for induction, that there would be no delay.

(Paper marked Defendant's Exhibit "S").

Q. I show you Defendant's Exhibit "S", and ask you what that is. A. It is a complete report of physical examination, which was completed on September 12, 1944—a re-examination.

Q. Where? A. In Pittsburgh; at the induction station in Pittsburgh.

Q. At what division of the Armed Forces? A Well, he was assigned to the Naval Forces at that time.

Q. Well, I am asking you what division is that report from? A. Examination at the induction station; there is no particular division.

Q. That says "United States Navy", does it not?

A. That was put on there after the examination.

Q. It says "U. S. Naval Forces" at the top.

A. Well, they decide that; we don't.

Q. I just want to be sure the testimony is right.

(Paper marked Defendant's Exhibit "T").

Q. I show you Defendant's Exhibit "T", and ask you to identify that. A. It is a copy—it is a letter, apparently a copy, from the registrant, under date of September 11, 1944, relative to the registrant's reporting for induction.

(Paper marked Defendant's Exhibit "U").

Q. I show you Defendant's Exhibit "U", and ask you to identify that. A. It is a letter from the United States Navy Recruiting Station, dated September 12, 1944, relative to the fact that Mr. Estep refused—

Mr. Mashank (to witness): Now, don't recite the contents of the letter; just identify the letter—identify the paper.

(Paper marked Defendant's Exhibit "V"),

Q. (Counsel hands Exhibit "V" to witness).

R. It is a delinquent registrant report, dated September 13, 1944.

Q. That is referring to Defendant's Exhibit "V"?

A. That is right, sir.

Q. It is dated September 13, 1944? A. That is right.

Q. I show you Defendant's Exhibit "A". Was that document forwarded to the Appeal Board with the rest of the papers in the file? A. No, it wasn't.

Q. Was it ever sent to the Appeal Board?

A. That part of it was not.

Q. Why wasn't it? A. Because it wasn't a part of the record.

Q. Now, would you explain why you didn't make it a part of the record? It was mailed to you.

Mr. Mashank: Now, that is objected to, as being improper cross examination. It has no bearing on this case.

The Court: Let me see the paper. (Exhibit "A" handed to the Court). We sustain the objection.

Mr. Covington: We take exception.

Q. Now, this Defendant's Exhibit "A", which you have identified, contains affidavits and signed statements, does it not? A. That is right, sir.

Q. Now, is that not the same set of affidavits that he offered to you in the fall of 1942, when you told him that the file had been forwarded to the Appeal Board?

A. I believe—

Mr. Mashank: Now, wait. That is objected to, as being improper cross examination. It has no bearing in this issue at all.

The Court: We sustain the objection.

Mr. Covington: We except. And in connection with our

exception, we want to show what we would develop along this line.

The Court: Come to side bar.

Mr. Covington (at side bar): We shall show by the cross examination of this witness that the registrant, the defendant in this case, approached him as the clerk of the Local Board in the fall of the year 1942, after the defendant had taken his appeal to the Board of Appeal and before the file was actually forwarded to the Board of Appeal, and during such time as this witness says that it was lost, and that the registrant offered the witness, who is the clerk of the Board, this group of affidavits to be placed in his file and forwarded to the Board of Appeals; that the witness told the registrant a lie, that the file had already been forwarded to the Board of Appeal, and also informed the defendant that he would not accept these affidavits to forward to the Board of Appeal; that the defendant kept these affidavits in his personal file at home until May, 1944, when he found out that his file was not in the hands of the Board of Appeal but that it was still in the hands of the Local Board, and therefore he immediately went to the Local Board and asked permission—or rather, that he mailed these affidavits to the Local Board and requested that they be placed in his file and forwarded to the Board of Appeal. This duty that he requested the Board to perform—the clerk to perform—is specifically required by the Selective Service regulations: That any registrant desiring to submit additional evidence may do so after an appeal has been taken, and that it is the duty of the Local Board to forward it to the Board of Appeal before the case has been determined by the Board of Appeal. We propose to show, if this cross examination is pursued,—we will establish that the Local Board violated the defendant's procedural rights to have a full

and fair hearing by its continuously withholding this evidence, contrary to the regulations, contrary to the Constitution of the United States and the due process clause, denied him the right to file evidence relative to his status; and that, since the Board of Appeal was the last Board to determine the question, and this evidence was withheld, the Selective Service System was denied the right to consider any evidence relative to his ministerial status and were deprived of the right to know the defendant's side of the story, but only the Local Board's side of the story, and therefore it would establish beyond doubt that his procedural rights were violated, his Constitutional rights were violated, the Act was violated, the regulations were violated. And it certainly is admissible in defense to the indictment.

Mr. Mashank: If the Court please, I object to this offer for this reason: First, it is improper cross examination; second, it has no bearing to prove or disprove, or tend to prove or tend to disprove, any issue in this case. And, furthermore, this is not a procedure to review the defendant's classification; this is a procedure wherein he is being prosecuted for refusing to submit to induction. If this were a habeas corpus proceeding or some other proceeding to review the defendant's classification, that might be material.

Mr. Covington: In order that the Court may not be misapprehensive of our purposes, this evidence here is not necessarily directed at the erroneousness or error of the classification; it is directed for the purpose of showing that the administrative agency, the Local Board itself, deliberately violated the Constitutional rights of this man, and thereby deprived him of his right to a full and fair hearing, which any decent American board or administrative agency would allow and regard as something that is sacred, in order that

a man might have a full hearing. That is not an error of classification, it is altogether different. Moreover, the process has been sufficiently concluded as would entitle this defendant to judicial review, because he has completed his administrative remedies.

Mr. Mashank: I stand on the statement I have made, on my objection.

The Court: We sustain the objection.

Mr. Covington: Except. And, in connection with the exception, the Court has not made clear to me whether or not he is of the opinion that the defendant has not exhausted his administrative remedies so as to entitle himself to judicial review, pursuant to the *Billings decision* and the *Falbo decision.*

The Court: We have a particular case on trial here, in which the defendant is charged with violation of the Selective Service and Training Act, in refusing to submit to induction; and that is the only issue to go to this jury.

Mr. Covington: Now, we would except to that construction and ruling that the Court has passed upon the statute and the regulations under the facts and circumstances disclosed in this case, because the record shows that he has completely exhausted his administrative remedies by submitting to a pre induction physical examination and by reporting at the induction station, where he underwent a physical examination; that this construction placed upon the Acts and Regulations, which would require the defendant to comply with the orders as a condition precedent to challenging the action of the administrative agency, denies the defendant the right to challenge the action of the agency at this time, its ruling, its orders and the orders of the Armed Forces based upon its rulings; is such a ruling

by this Court as would deprive the defendant of his Constitutional rights to establish that the administrative agency violated the due process clause of the Fifth Amendment by denying him the right to present all the evidence to the Board, and then denied him the right of full and fair hearing, denies the defendant the right to show that he is exempt and has no duty to perform under the Act, because he is a minister of religion, and denies him the right to show he was not liable for training and service; it denies him the right to show that the order was in excess of the jurisdiction and authority of the administrative agency; it denies him the right to show that the orders were void and illegal and contrary to the Acts and Regulations; and, as a matter of fact, it would establish that he is exempt as a matter of law and fact as a minister of religion, and that the administrative agency acted contrary to the Act and Regulations and contrary to the Constitutional rights of the defendant, in violation of the due process clause, and that by reason thereof the orders of the Armed Forces requiring him to submit to induction are void and illegal; and the construction placed upon the Acts and Regulations, which denies us the right to make such an inquiry upon the trial of this case, so as to require him to comply with the orders of the agency as a condition precedent to challenging the action of the agency or so as to deny him the right to challenge the action of the agency at this time, its ruling and its orders and the orders of the Armed Forces, converts the Acts and the Regulations into a bill of attainder, contrary to the Third Article of the United States Constitution, Clause 3, Section 9, Article 1, and also violates the defendant's Constitutional rights to a full judicial trial upon the issue of his liability for training and service and upon the issue of the invalidity of the orders, contrary to the due process

clause of the Fifth Amendment to the United States Constitution. Now, what does the Court think about that exception.

The Court: The Court is of the same opinion I have heretofore expressed with regard to your offer, and I sustain my ruling.

Mr. Covington: And this exception is allowed?

The Court: Surely.

(Note: Short recess taken at this point).

Q. You stated that you had to fix up arguments to the Appeal Board. Can you find your arguments to the Appeal Board in the file any place? A. Yes, sir.

Q. All right. You have handed me Defendant's Exhibit "M". Was that asked for by the Board of Appeal?

A. It was not asked for, no, sir.

Q. Was it sent by you when you forwarded the file to the Board of Appeal? A. That is right, sir.

Q. For the first time? A. Yes, sir.

Mr. Covington (at side bar): Now, if Your Honor please, we offer in evidence at this time Defendant's Exhibit "M", in which there is a letter written to the Board of Appeal by the clerk of the Local Board, unsolicited, uninvited, stating certain facts and conclusions and arguments, which are contrary to the Act and Regulations, which prohibit a Local Board from expressing any opinions in the communications to the Board of Appeal. And that evidence is offered for these two purposes: First, to show that this particular witness is prejudiced and has bias against the defendant, and it is proper for the jury to consider that evidence to determine his credibility. Secondly, it is offered for the purpose of showing that the Local Board violated the defendant's procedural rights of

having a full and fair hearing, the right to be heard by a Board of Appeal unprejudiced and without prejudicial opinions from the Local Board; that, if we are permitted to introduce this evidence, we will establish that the defendant's Constitutional rights of due process—procedural due process—have been violated by the administrative agency through the actions of this witness in behalf of the Local Board, and that his rights under the due process clause of the Fifth Amendment will be shown to have been violated.

Mr. Mashank: We object to it, as not being the proper time to offer any exhibits for the defendant, this being cross examination; and secondly, even if it be admitted out of order, it has no evidential value to the issue in this case, and we object to its introduction.

Mr. Covington: May I say this, Your Honor,—Concerning the matter of being out of order, for the purposes of impeaching this witness and showing his bias and prejudice it is admissible at this time on cross examination. As for the other purpose, that can be introduced at a later time.

Mr. Mashank: Objected to.

The Court: We sustain the objection.

Mr. Covington: Exception.

Mr. Covington (in open court): That is all, Your Honor. Now, this witness is not to leave. We move that the witness leave the file here which has been identified; we expect to use it. And the witness should not leave either, for we are not through with him.

Mr. Mashank: All right.

LT. COM. ELMER B. KECKLER (a witness produced on behalf of the Government, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Mashank:

Q. Commander, what is your full name?

A. Elmer B. Keckler.

Q. Where do you live? A. I am at the present time residing in Pittsburgh.

Q. And what is your business or occupation?

A. I am a Lieutenant Commander in the United States Navy.

Q. Where are you located? A. You mean by that to what duty am I assigned?

Q. That is right. A. I am at the present time the district commanding officer of Navy recruiting and induction for the western half of Pennsylvania.

Q. Where is your office located?

A. In the Old Postoffice Building.

Q. Right here in Pittsburgh?

A. Third and Smithfield Streets, Pittsburgh.

Q. Do you recall the date of September 12, 1944, when the defendant in this case, William Murray Estep, was presented for induction? A. Yes, sir.

Q. Did you see the defendant that day?

A. Yes, sir, I did.

Q. At the induction station?

A. At the Navy induction station, yes, sir.

Q. Did you have any contact with him at that time?

A. Personal contact, yes, sir.

Q. Will you please tell the Court and jury just what happened, so far as you were able to observe?

A. This man Estep had been qualified for military service by physical examination—

Mr. Covington: Now, we object to conclusions in this case, Your Honor. It would be better for him to state the facts, what he knows and from the records.

Q. Just tell what happened at the Naval induction station when the defendant was there and you were there.

A. Estep reported to the Navy induction station on the morning of September 12th—

Mr. Covington: If you please, Your Honor, I have no objection to the witness stating the process that is ordinarily followed with inductees, if he will describe it step by step, before he gets to the point where he met the man,—if he will do that, but leave out any argumentary conclusions.

The Witness: Just what do you mean?

The Court:

Q. Go ahead, Commander. You had started to say that this man came to the Navy induction center September 12, 1944. What happened there and what was said?

A. On the morning of September 12, 1944, Estep presented himself to the Navy induction station. He reported to the chief recruiter, or the man who handles inductees, and presented to that man, who is chief electrician's mate, E. L. Tissue—presented to him a letter stating that he refused to be inducted. Chief Tissue brought the letter to me and said that Estep had reported and presented him with this letter. I asked the Chief to show Estep into my office, and he brought him into my office, at which time I discussed with him his reason for objecting to being inducted. I told Estep the procedure under the Selective Service Act and under the directive under which we were working, from the Navy Department, which states that a man assigned to the Navy forces from the induction station does not have to take an oath which would induct him into the Naval forces, but that there was a certain procedure which would induct him. He said that he was familiar with the procedure. If I

may, I will read from our directive the procedure under which we work—

Mr. Covington: There is no objection to that, if you will identify it, please—the directive.

A. (Continuing) The directive is from the Bureau of Navy Personnel, Washington, D.C., under date of June 22, 1944. It may be identified by Circular Letter No. 11-44, "To all Navy Recruiting and Induction Stations". On Enclosure 3 of this directive it reads as follows:

"The following procedure will govern the induction of all persons assigned to the Naval Forces through the Selective Service System and shall be strictly adhered to by all recruiting officers:

"All registrants assigned to the Naval Service have been determined qualified in all respects for actual induction. They will be assembled, and the recruiting officer will then deliver a short ceremonial talk to the men. After such ceremonial talk, these qualified individuals will be informed of the eminence of induction. The following language exactly as quoted will be used:

"'You are now about to be inducted into the United States Navy. You will take one step forward as your name is called, and such step will constitute your induction into the United States Navy.'

Any registrant who fails or refuses or refuses to step forward when his name is called will be removed courteously from the presence of the group about to be inducted and questioned privately with respect to his willingness to be inducted."

Mr. Mashank:

Q. All right. Now, was the defendant's name called, in

accordance with that directive or instructions?

A. The defendant was informed of our procedure, and his name was called.

Q. All right. What happened after that? A. He said, as near as I recall his words, "I refuse to take the step forward, because I refuse to be inducted into the Navy."

Q. What happened after that? A. After that he was informed of the section of the directive which outlines our procedure in case a selective refuses to be inducted.

Q. He was informed of that, was he? A. Yes, sir; and he was informed verbatim. I read it from the directive. Do you want me to read that now?

Q. Yes. A. (Reading):

> "Any registrant removed from the group as described in paragraph 1(d) above, and who persists in his refusal to submit to induction will be informed that such refusal constitutes a felony under the provisions of the Selective Training and Service Act of 1940 as amended. He will be further informed that conviction of such an offense under civil proceedings will submit him to be punished by imprisonment for not more than five years or a fine of not more than $10,000, or both. A voluntary signed statement from the man, in his own handwriting, will be requested and obtained wherever practicable, reading "I refuse to be inducted into the United States Navy". Such statement should be witnessed by at least two witnesses, who will affix their signatures to the statement. Individuals in this category will not be furnished transportation in any form by the Navy."

Q. Did the defendant persist in his refusal?

A. Yes, sir. I asked him, since he refused induction, whether he would give me a statement for our records, reading as I have quoted from the directive.

Q. Did the defendant give you that statement?

A. He said he would sign no statements.

CROSS EXAMINATION

Mr. Covington:

Q. Commander, how long was Mr. Estep at the United States Navy recruiting station, that is, from the time that he first came there to be accepted, from his Local Board, to the time that he left? A. The Chief, to whom he reported, reported to me and delivered his letter at about 9:30, as near as I recall, in the morning.

Q. Of what date? A. Of September 12th.

Q. Was that the first day that he appeared at the induction station? A. He appeared at the induction station on September 11th, at which time he was qualified for the Armed Forces by physical examination.

Q. Now, what is the process that is usually followed on appearance at the recruiting station, or the induction station? A. Well, you are talking about recruiting station and induction station—

Q. I mean the induction station,—on the 11th.

A. Maybe I can clear it this way: Men ordered in from the Local Boards go to the induction station, at which they are qualified for military services in one of the Armed Forces.—

Q. Are you familiar with the process as followed at the induction station? A. Yes, sir; I direct it.

Q. Now, what is the process that is followed from the time a man comes there until he leaves the induction station?

Mr. Mashank: That is what he is trying to tell you.

A. That is what I was proceeding with.

Q. All right.

A. A man comes in. He is examined physically. After he is found physically qualified—or after he completes his physical examination he comes before a medical board consisting of Army and Navy medical officers, who qualify

him for general service, or special assignment at that time. This man was qualified for general service. He then goes to the assignment board, which consists of a group of non-commissioned officers of the Army, Navy and Marine Corps and a further board of Army and Navy commissioned officers. At that time he is classified as to education and skill and age. From those groups the Navy receives a ratio of so many men, which varies from month to month. We take so many of a certain age, so many of skill—so many of the men who are classified as skilled—and so many of them according to their education.

Q. And then what?

A. Then the men who are assigned to Navy go to our fingerprinters and men who make certain medical records of them at the induction station. From there they are directed to go to the Navy recruiting and induction station, which is in the same building but on the first floor of that building. Their records are completed, that is, their service record and their health record and shipping articles and other records in connection with their being put into the Naval Forces. And from that point they are sworn in and sent to a training camp.

Q. Now, Commander Keckler, Mr. Estep had quite a discussion with you, did he not, about his reasons for refusing to submit to induction, while he was at the recruiting station on that day? A. He discussed it, I would say briefly.

Q. Well, you would say briefly; but he did discuss the fact that he was a minister, did he not? A. Yes, he told me that he was a minister, and I told him we weren't concerned with that, because that was—his draft classification was handled by the Selective Service Board, and men who were physically—who were examined and found physically qualified were assigned to us, and their draft classification had been cleared up prior to that.

Q. Well, in connection with one of the forms that he had signed at the recruiting office under your supervision there

was—What is the name of the man that brought him to you?

A. E. L. Tissue.

Q. Now, did E. L. Tissue have certain things to do in reference to forms to fill out in connection with his going through the process at the recruiting station on that day?

A. E. L. Tissue would have charge of logging the men in and of starting them through the lines where their shipping articles and records—their Navy records—would be made up.

Q. Was that up on the mezzanine floor, or balcony floor?

A. No, that is on the first floor.

Q. Who is the man that is on the mezzanine or the balcony floor? A. The man who has charge on the mezzanine floor would be chief gunner's mate Schooley—E. C. Schooley.

Q. And what would he have to do with this process?

A. He would make additional copies of the physical examination and the Form 221's which were sent to us by the Draft Board. He would also have him sign his shipping articles and his family dependency forms.

Q Had this registrant, Mr. Estep, been by that desk?

A. That I do not know.

Q. Do you not have a large green form that requires a recruit to sign an oath? A. That is a copy of the shipping articles, which contains the oath that is administered to the men verbally.

Q. Yes; and that is required to be signed, is it not?

A. That is right.

Q. Is that signed before or after the oath? A. That is signed after the oath. I will qualify that statement by saying in some cases we have the men sign those before the oath is administered, but they read the oath and know what they are signing.

Q. I show you Defendant's Exhibit "T", and ask if you have ever seen that. A. Yes, sir, I have.

Q. Where did you see it? A. This was presented to me by Chief Tissue, and was presented to him by Estep

when he reported on the morning of September 12th.

Q. Did you read it? A. I did.

Q. Did you get a copy of it? A. I have an original of the same letter.

Q. Well, where is it? A. I have it with me; it is part of our file (producing paper).

Q. Now, did you read it over when he handed it to you, carefully? A. I read it over, yes, sir.

Q. And in that letter it states, does it not, that he refused to submit to induction—

Mr. Mashank: Well, let's do it this way,—of course, it is out of order, but I will agree that you can introduce this out of order into evidence, and then let him read it to the jury.

Mr. Covington: All right. Suppose we use Defendant's Exhibit "T", which is in the file, instead.

Mr. Mashank: All right.

Mr. Covington: I wish at this time to offer in evidence, pursuant to the statement of Mr. Mashank, Defendant's Exhibit "T",—which shall be read to the jury, out of order, he says.

A. This is dated September 11, 1944, and addressed to "Local Board No. 4, Washington County, State Armory, Canonsburg, Pennsylvania". Under that:

"To Officer in Charge, Induction Station:

"I am reporting to this induction center because I am required by law and by the decision of the Supreme Court so to report.

"I am a duly ordained minister of the gospel (Isaiah 61:1, 2) and I expect to obey all the laws of the United States that are in harmony with the laws of God as set forth in the Bible (Matthew 22:21), and that do not require me to give up the ministry (1 Corinthians 9:14, 16).

"'The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek, . . . to proclaim the acceptable year of our Lord, and the day of vengeance of our God; to comfort all that mourn'—Isaiah 61:1, 2.

"'Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's'—Matthew 22:21.

"'Even so hath the Lord ordained, that they that preach the gospel should live of the gospel. For though I preach the gospel, I have nothing to glory of; for necessity is laid upon me; yea, woe is unto me, if I preach not the gospel.'—First Corinthians 9:14, 16.

"The undenied evidence before the Board conclusively proved that at all times I showed myself to be a regular or duly ordained minister of religion, and by the Act of Congress I am therefore exempt from military training and service. The Board violated the Act of Congress by refusing me exemption, and the Board and Naval authorities have not the authority to require me to submit to induction.

"Since the Supreme Court has said that the military authorities cannot forcibly induct me, I ask the Commanding Officer to release me after I have complied with all the orders of the induction station up to submission to actual induction in order that I might make my defense in Federal Court. Respectfully, William Murray Estep (signed)."

EUGENE H. STEWART, a witness produced on behalf of the Government, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Mashank:

Q. Your name is Eugene Stewart. A. That is right.

Q. What is your occupation or profession? A. I am employed as a special agent with the Federal Bureau of Investigation.

Q. You are assigned to the Pittsburgh Field Office?

A. That is correct.

Q. State whether or not you were assigned to an investigation of the case involving William Murray Estep, the defendant in this case? A. I was.

Q. Did you make that investigation? A. I did.

Q. And in the course of your investigation did you call upon the defendant or come in contact with him?

A. I did.

Q. Where and when? A. On September 16th of this year, Saturday afternoon, at approximately 3:30.

Q. Where did that take place? A. At the defendant's home, 195 Summit Avenue in Canonsburg.

Q. Was there any other agent present or were you alone? A. I was alone.

Q. And you say at that time you had some contact with the defendant? A. I did.

Q. Anybody else present? A. No one else at the time

Q. Just the two of you? A. That is correct.

Q. Now, tell the Court and jury what happened on that occasion. A. I interviewed Mr. Estep outside of his home, in the car that I was driving at that time, and I told him that I was there for the purpose of ascertaining why he had followed his particular course in reporting for induction and of failing to go through the entire process. He explained to me that he had had contact with other cases involving members of his sect, and that he had noted that the defense when it had been drawn up in court had been such that the United States Attorney would point out that this man had failed to report for induction or had failed to do this particular act as required by law, and he told me that he felt that in his actions he was submitting to induction, and in any event if this was not accepted by the induction

station he would then have a good defense or an issue to bring up in court when his case would come up for trial.

Q. Did he make any written statement to you?

A. I asked him if he would indicate what he had told me in writing, and he declined to make any written statement.

(NO CROSS EXAMINATION).

GOVERNMENT RESTS.

Mr. Covington; We shall reserve motion until the close of the case.

DEFENDANT'S CASE.

JOHN W. McNUTT, recalled on behalf of defendant, having been previously sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q. Outside of Defendant's Exhibit "A", which you said was mailed but not placed into the file—

A. That is right.

Q. (Continuing)— and which was not forwarded to the Board of Appeal— A. That is right.

Q. (Continuing)— I show you the entire file of William Murray Estep, marked on the outside as Order No. 11918, Serial No. N-186, Local Board No. 4, Washington County, showing date of registration June 30, 1942, on which appears a stamp "Received August 23, 1944, Pennsylvania Selective Service Headquarters", and then again "Received August 8, 1944, Pennsylvania Selective Service Headquarters", and on which is written, at the lower lefthand corner, on the face of the file, "9120" - "Q", I assume it is?

A. "O"; I presume; I don't know.

Q. What does that mean? A. That is the Appeal

Board number, this number here (indicating).

Q. And "NF NAS"? A. "None further, not available for service".

Q. And that contains Defendant's Exhibits "B" to "V", inclusive, and attached on the inside of the file is the registration card, which has not been identified, but which we shall have identified at this time as Defendant's Exhibit "W" (Said card so marked). Does that file that I have just identified, exclusive of Government Exhibits Nos. 1 and 2 and Defendant's Exhibit "T", contain all the papers that were in that man's file at any time during the process of it before the Selective Service System? A. That is right; it does.

Q. It does. But Defendant's Exhibit "A" is not a part of that file? A. That is right.

Q. Officially; although it was received—

A. Officially it was received, but it was received after the—

Q. I understand; but it was received on May 23d or thereabouts? A. On May 24th.

Q. And has been in the possession of the Local Board ever since. Is that right? A. Yes, sir, it has been.

Q. And was not placed inside of the file?

A. It was not placed inside of the file.

Mr. Covington (at side bar): At this time the defendant offers in evidence the entire file, being Defendant's Exhibits "B" to "W", inclusive, which has been identified as the entire file that was before the Selective Service System. We offer that file as a part of the defense to the indictment, on the grounds that this defendant is charged, not with failing to report but with failing to submit to induction after having reported for induction; that under the decisions of the Supreme Court of the United States, *Falbo* v. *United States* and *Billings* v. *Truesdale*, he has sufficiently exhausted his administrative remedies so as to entitle him to a judi-

cial review of the illegality of the Draft Board order. This file is offered for the purpose of showing that the action of the administrative agency was illegal; that it shows without dispute that the defendant was at all times a minister of religion, exempt from training and service. It shows that there was no evidence credible or substantial before the agency which disputed his evidence and claims submitted that he was a minister within the meaning of the Acts and Regulations. It shows that the action of the agency in holding him not exempt is contrary to the undisputed evidence, contrary to law, without support of substantial evidence, arbitrary and capricious; and that the orders of the agency, the orders of the Board, the orders of the military authorities—that is, the Armed Forces authorities, particularly the Naval recruiting offices—based upon these Selective Service orders, are void, illegal, contrary to the Act and Regulations; collide with the due process clause of the Fifth Amendment, in that the file that is before the Court shows that the defendant has been denied his liberty without due process of law, contrary to the Fifth Amendment. Moreover, the file shows that the administrative agency acted without support of substantial evidence, without support of any evidence, in ordering this man classified, and that it has no jurisdiction or authority to order him to report for induction, because he is exempt as a minister of religion within the meaning of the Act. And for all these reasons the orders of administrative directives and the military—rather, the Armed Forces authorities' directives, based thereon, are void, illegal, contrary to the due process clause of the Fifth Amendment to the United States Constitution; and if the Court places a construction upon the Act and the regulations which requires the defendant to submit to induction as a condition precedent to judicial review,

or if the Court places a construction upon the Act and Regulations so as to deny the defendant the right to challenge the illegality of the orders upon which the indictment is based, the Court thereby has denied the defendant his right to a judicial trial, contrary to the due process clause of the Fifth Amendment, the Third Article of the United States Constitution, and has converted the Act and Regulations into a bill of attainder contrary to Clause 3, Section 9 of the First Article of the United States Constitution. Moreover, it would deny the defendant his right to a judicial trial and to challenge the orders upon which the indictment is based. He should be permitted to defend to the indictment on these grounds. That is our statement in connection with the offer.

Mr. Mashank: If the Court please, I object to the offer of the entire file, first, because it contains a lot of matter that has no evidential value at all. He ought to segregate the various papers and offer them individually, so we can determine which papers have any evidential value and which have not. In the second place, he has not exhausted the administrative processes, because the Supreme Court has said that the administrative process is not completed until the defendant, or registrant, is actually inducted. This man was not inducted, because he was not sworn in. Therefore the process has not been completed, and therefore this court has no right to review the classification.

Mr. Covington: For the purpose of saving time—I can stand here and offer each document in that file and make the same statement that I have just made, in connection with each document, if you want me to—can you point out the parts in there that you think should not go in?

Mr. Mashank: That is not my business. It is your busi-

ness to offer them; it is my business to say whether I have any objections to them or not.

Mr. Covington: If that is the way you want to do it, all right. It will take us an hour, but all right.

Mr. Mashank: I don't want to keep anything out that should go in.

The Court: As I understand it, you are withdrawing your offer—

Mr. Covington: No, I am not withdrawing it; I am going to tender each exhibit separately. I still insist on the offer at this time, and I offer Defendant's Exhibit "B", and incorporate as a part of this offer each and every word that I have heretofore stated in connection with the offer of the entire file. Is that permissible, or must I repeat it?

Mr. Mashank: I think that is all right, to work it out that way. No objection.

Mr. Covington: You have no objection to the introduction of Defendant's Exhibit "B"?

Mr. Mashank: No objection to the introduction of Defendant's Exhibit "B".

Mr. Covington: All right. I offer in evidence Defendant's Exhibit "C", and incorporate as a part of that offer each and every word that I said in connection with the offer of the entire file.

Mr. Mashank: All right. Now, this is objected to, as not having any evidential value.

The Court: We sustain the objection.

Mr. Covington: We except to the Court's ruling, and incorporate as a part of the exception each and every one of the reasons stated in the offer. Is that agreeable?

The Court: I don't think you have to take an exception.

Mr. Covington: I understood it is the rule, until the new rules go into effect, that you must take an exception unless it is agreed by court and counsel that it is unnecessary to take an exception. The new Criminal Rules haven't gone into effect yet. Now, if it is the practice in this court and we three can agree—

Mr. Mashank: I have always understood the practice to be, you didn't have to take exceptions.

The Court: Well, that is the practice in civil procedure.

Mr. Covington: But not in criminal cases, as far as I know it.

Mr. Mashank: All right. You must ask for an exception and the Court grants it—is that right?

Mr. Covington: All right; the Court grants me an exception, then, whenever I ask for it. The defendant offers in evidence Defendant's Exhibit "D", and incorporates in that offer each and every word that was stated in connection with the offer of the entire file. Is that permissible?

The Court: Yes.

Mr. Mashank: This is objected to, as having no evidential value to the issue in this case.

The Court: We sustain this objection.

Mr. Covington: And we except,—with the exception allowed. We offer at this time Defendant's Exhibit "E"—

Mr. Mashank: No objection to Defendant's Exhibit "E".

Mr. Covington: We offer in evidence Defendant's Ex-

hibit "F", which is a transcript of the testimony of the defendant given before the Local Board.

Mr. Mashank: This is objected to, as not having any evidential value so far as the issue at trial is concerned.

Mr. Covington: I offer that document for each and every one of the purposes stated in the general offer of the entire file made just a moment ago, and ask that it be incorported as part of the offer.

The Court: This would have no evidential value except we had the authority to revjew the correctness of the classification by the Draft Board, and I don't think we have.

Mr. Mashank: No, you haven't, Your Honor, not in this proceeding.

The Court: We sustain the objection.

Mr. Covington: We except to the ruling of the Court, and the exception is allowed. At this time we offer in evidence Defendant's Exhibit "G", for each and every one of the reasons stated specifically by me.

Mr. Mashank: No objection.

Mr. Covington: We offer at this time Defendant's Exhibit "H", for each and every one of the reasons stated more specifically by me in connection with the offer of the entire file, which are incorporated herein as though repeated at length.

Mr. Mashank: No objection.

Mr. Covington: We offer in evidence Defendant's Exhibit "I", for each and every one of the reasons more particularly stated in the offer of the entire file a few moments ago, which are incorporated herein as though repeated at length.

Mr. Mashank: No objection.

Mr. Covington: We offer in evidence Defendant's Exhibit "J", which is offered for each and every one of the purposes stated in the original offer of the entire file, which are incorporated herein as though repeated at length.

Mr. Mashank: This is objected to, as having no evidential value to the issue in this case.

The Court: We sustain the objection.

Mr. Covington: We except. We at this time offer in evidence Defendant's Exhibit "K", and incorporate each and every one of the reasons stated in the offer of the entire file a few moments ago, as though repeated at length.

Mr. Mashank: No objection.

Mr. Covington: At this time defendant offers in evidence Defendant's Exhibit "L" for each and every one of the purposes stated in the general offer in connection with the entire file, which are incorporated here as though repeated at length.

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence Defendant's Exhibit "M" for each and every one of the purposes stated in the general offer of proof in connection with the entire file, which are incorporated here as though repeated at length.

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence Defendant's Exhibit "N" for each and every one of the purposes stated in the general offer of proof of the entire file a few moments ago, as though repeated at length here.

Mr. Mashank: Objected to, as having no evidential

value to the issue in this case.

The Court: We sustain the objection.

Mr. Covington: We take exception to the Court's ruling. At this time defendant offers in evidence Defendant's Exhibit "O", for each and every one of the purposes stated in connection with the general offer of proof of the entire file a few moments ago, which reasons are incorporated here as though repeated at length.

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence at this time Defendant's Exhibit "P", for each and every one of the purposes stated in the general offer of proof in connection with the entire file a few moments ago, as though repeated here at length.

Mr. Mashank: No objection.

Mr. Covington: At this time defendant offers in evidence Defendant's Exhibit "Q", which is offered for each and every one of the purposes stated in connection with the general offer of proof in connection with the entire file a few moments ago, as though repeated here at length.

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence Defendant's Exhibit "R", which is offered for each and every one of the purposes hereinbefore stated in connection with the general offer of proof, as though repeated at length here.

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence Defendant's Exhibit "S", which is offered for each and every one of the purposes made in connection with the gen-

eral offer of proof in connection with the entire file a few moments ago, as though repeated at length here.

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence Defendant's Exhibit "U", for each and every one of the purposes and reasons heretofore stated in connection with the general offer of proof in connection with the entire file, as though repeated at length here.

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence Defendant's Exhibit "V", for each and every one of the reasons stated in connection with the general offer of proof in connection with the entire file, as though repeated at length here.

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence Defendant's Exhibit "W".

Mr. Mashank: No objection.

Mr. Covington: Defendant offers in evidence the cover sheet, which we will ask to have marked as Defendant's Exhibit "X". (Said cover so marked).

Mr. Mashank: No objection.

Mr. Covington: Now, at this time the defendant offers in evidence Defendant's Exhibit "A", which has been identified by the witness McNutt as having been received on May 23, 1944, but which was refused to be placed in the file, which remained in the possession of the Local Board to this time, and which was not forwarded to the Appeal Board or the State Headquarters or the National Headquarters in connection with the review of this man's classification. This offer of proof is made for the purpose—for each and every one of the purposes hereinbefore stated in connection with

the original offer of proof and for each and every one of the reasons and arguments stated in that offer in favor of the offer, and on these additional grounds: If these particular documents were received in evidence in connection with the testimony given by the witness McNutt, the defendant would show that the Local Board denied him the right to a full and fair hearing, the right to submit evidence; that it rejected evidence, that it ignored evidence, that it denied the Board of Appeals to consider evidence lawfully submitted by the defendant; that the Local Board itself violated the Selective Service Regulations, which were that any and all proof offered by the defendant or registrant prior to forwarding the file should be placed in the file and any and all evidence offered by the defendant after appeal has been taken should be forwarded to the Board of Appeal; that these Regulations of the Selective Service System were not complied with, and therefore the Local Board denied the defendant the right to a full and fair hearing before the Board of Appeal, the right to submit evidence before the Board of Appeal; the Board rejected evidence offered for the Board of Appeal, denied the defendant the right to have his evidence submitted to the Board of Appeal,—all of which action on the part of the Board, in denying him these rights to procedural due process before the administrative agency, abridged the rights and liberties of the defendant or registrant before the Local Board, in violation of the due process clause of the Fifth Amendment of the United States Constitution.

This offer is admissible for the additional reason that this is not an effort to show that the Board erred in arriving at a particular classification, but that the Board violated the procedural rights of the defendant, contrary to the due process clause of the Fifth Amend-

ment. And in this connection I refer to the previous offer in connection with the entire file, where I elaborated certain reasons, which the Court permitted me to incorporate here by reference—is that permissible, Your Honor? Again I should like to make that request. If it is not agreeable, I should like to repeat each and every one of those reasons, so there will be no question about the record.

Mr. Mashank: I think that is all right; put it in in connection with the general offer, and incorporate it, as you did with these other exhibits.

Mr. Covington: All right.

Mr. Mashank: I object to the offer of Defendant's Exhibit "A", for the reason it contains no evidential value or any paper there that could prove or disprove any issue in this case.

The Court: We sustain the objection.

Mr. Covington: We except.

(Recess taken until 1:30 o'clock P.M.)

AFTERNOON SESSION

Mr. Covington: Mr. Reese, Chairman of the Local Board.

THOMAS M. REESE, a witness called on behalf of the defendant, duly sworn.

Mr. Mashank: If the Court please, I would like to have an offer at side bar as to what is proposed to be proved by this witness.

Mr. Covington: (At side bar) First I propose to show his name, his age, his address and his occupation, and prove by him the names of the members of the Local Board at the time this man was classified in 1942 and

at the time the case was considered by the Board of Appeal. Then I propose to show other things. Now, what do you think about that offer there, Mr. Mashank?

Mr. Mashank: I don't see where it has any material bearing; but, to save time, I won't object to that part.

Mr. Covington: Well, let me ask him the questions down that far, and then I will get that much in evidence; and then I will come to side bar when I have completed that part of the examination.

Mr. Mashank: All right; I think that will save time.

DIRECT EXAMINATION

Mr. Covington:

Q. For the benefit of the jury, Mr. Reese, would you please tell us your full name, your age, your occupation, and what position if any you hold with Local Board No. 4 of your County? A. Full name, Thomas M. Reese; age seventy-two; occupation, I am a justice of the peace.

Q. And in addition to your regular occupation of being justice of the peace, what if any position do you hold with Local Board No. 4 of the Selective Service System in your County? A. I am a member of Local Board No. 4.

Q. Of what County? A. Washington County, Pennsylvania.

Q. Well, you are a member; but what position, if any, do you hold as a member with that Board?

A. At present, Chairman.

Q. And how long have you been Chairman, Mr. Reese?

A. Since March 3, 1943.

Q. 1943. Now, would you be kind enough to tell us who was Chairman during the year 1942 and up to the time that you were appointed as Chairman? A. Earl Davidson.

Q. Mr. Earl Davidson. And is he at present a member of that Local Board? A. He is not.

Q. Well, when did he resign, please, Mr. Reese?

A. Some time in the month of January, 1943.

Q. And he was then a member of the Local Board from what time? A. From October 16th up to a date in January, 1943.

Q. I didn't catch the year of the first date—October what? A. October 16, 1940, to a date in January, 1943.

Q. Thank you. Now, would you be kind enough to tell us, please, the names of the other members of the Local Board? A. As it is now constituted?

Q. Yes, as it is now constituted. A. Mr. Fred G. Gullick and Dr. W. A. Mannon.

Q. For how long has Dr. Mannon been a member of the Board? A. Since a date in February, 1943.

Q. And Mr. Gullick, how long has he been a member of the Board? A. Since the inception of the Board, since October 16, 1940.

Q. Then, as I gather, you and Mr. Gullick have been on the Board since its inception? A. That is true.

Q. And at its inception Mr. Davidson was on the Board, was he not? A. He was.

Q. Now, what is the occupation of those men whom you have mentioned? Just take them name by name.

A. Mr. Davidson is a principal of one of our public schools in Canonsburg; Mr. Gullick is an official of District No. 5 of the United Mine Workers of America.

Q. And the third? A. Mannon is a retired dentist.

Q. Could you give us approximately the ages of these gentlemen? A. I would say Mr. Gullick is about sixty-four years of age; Dr. Mannon would be about the same age, sixty-four.

Q. And Mr. Davidson, please? A. I would say Mr. Davidson was about forty-three years of age.

Q. Now, are you familiar with the defendant in this case, Mr. William Murray Estep, the gentleman that sits at this table here (indicating)? A. I know him.

Q. And how long have you been acquainted with Mr. Estep, Mr. Reese? A. I have known the family since before his birth.

Q. Yes? A. And as he grew up I learned to know who he was; I have known him almost constantly since.

Q. Now, he is one of the registrants with your Local Board, is he not? A. He is.

Mr. Covington (at side bar): If Your Honor please, I propose to show by this witness that all of the evidence received by the Board of any kind or character, if oral was reduced to writing, and if in writing was received and filed, except Defendant's Exhibit "A", which has been identified as excluded; that the Local Board considered no evidence which was not reduced to writing or which was not in writing, and that it considered only evidence in the file which was in writing. I propose to show by this witness that, pursuant to the Selective Service and Training Act Regulations and Opinion No. 14 of the National Headquarters of the Selective Service System, that the Local Board found that the Watch Tower Bible & Tract Society was a recognized religious organization under the Act, that it was the governing body of that society of missionary evangelists known as Jehovah's Witnesses, and that they both constitute a recognized religious organization under the Act; that the Local Board found that William Estep was a regular unordained but duly recognized and regularly performing his duties as a minister of religion of the Watch Tower Bible & Tract Society and Jehovah's Witnesses from 1936 to 1941; that they found that William Murray Estep was a regular and ordained—duly recognized and duly ordained minister of religion, performing his duties as a minister of the Watch Tower Bible & Tract Society and of Jehovah's Witnesses from 1941 to present; that they did not find that he was not recognized by the

Watch Tower Bible & Tract Society as an unordained minister from 1936 to 1941; that they did not find that he was not recognized by the Watch Tower Bible & Tract Society as an ordained minister from 1941 to present; that the Board did not find that he was not an ordained minister in 1941 according to the regulations of the Watch Tower Bible & Tract Society; that they did find that he was devoting substantially almost all of his time to the performance of his work as a representative of the Watch Tower Bible & Tract Society; that they found that he had dedicated his entire life to the performance of his duties as a prophet evangelist and as a missionary of the Watch Tower Bible & Tract Society and of Jehovah's Witnesses at the time that he was registered, at the time that he filed his questionnaire, at the time that he was classified by them; that they did not find any evidence which showed that the defendant was not devoting his full time and had not dedicated his entire life to the performance of his duties as a representative of the Watch Tower Bible & Tract Society; that they did find that he performed functions, ceremonies and duties which are performed normally by the orthodox clergy of the recognized religious denominations; that they did not find that the defendant was fictitiously or falsely claiming to be an authorized representative of the Watch Tower Bible & Tract Society, as claimed by him; that he cannot as a witness, nor can any member of the Local Board, find any written evidence in the file which disputes the claim of the defendant that he represented the Watch Tower Bible & Tract Society as a representative minister before October, 1941, and they did not find and could not find any evidence that the defendant was not representing the Watch Tower Bible & Tract Society as a full-time ordained minister of that Society since 1941 to this date; that the Local

Board cannot point out from the file wherein the defendant does not fit Opinion No. 14 of the Selective Service System concerning Jehovah's Witnesses, as amended, as a duly ordained minister or as a regular unordained minister of religion; that the reason that they did not classify the defendant as a regular or duly ordained minister of religion was, his name did not appear on the official certified list of the Pioneer Ministers circulated by the National Headquarters of the Selective Service System to all State Headquarters, and that if his name had been on such a list they would have classified him in Class 4-D as a duly ordained minister of religion without question; that they wrote the Appeal Board a letter stating that the defendant was not classified as a minister because his name did not appear on this certified list. Moreover, I propose to show by this witness that the Appeal Board wrote a letter and advised falsely and contrary to the facts and the record that the defendant devoted only three days of each week to the performance of his ministerial duties, which was contrary to the records and the facts which were before the Board at the time, which was prejudicial to the defendant. Moreover, that the Local Board received, filed—that is, received through the mails and failed to file and make a part of the cover sheet and file Defendant's Exhibit "A", which was a number of affidavits and written proofs showing that the defendant had devoted all of his time and was at the present devoting substantially all of his time to the performance of his ministerial duties; and that such denial by the Local Board of the filing of this written evidence withheld from the consideration by the Board of Appeal valuable, substantial and credible and important evidence which had a bearing on this case, and that, if they had received that evidence, the Board of Appeal would have

classified him differently. And that if we were permitted to examine along this line further, the defendant would show, as above stated, that such evidence would establish that the administrative agency had no evidence which disputed his claim for classification of 4-D exemption, exempting him from training and service; and that the action of the administrative agency, that is to say, the Selective Service System, is contrary to the undisputed evidence, in excess of its statutory authority, and therefore did not have jurisdiction to order the defendant to perform service and did not have jurisdiction to order him to report, and that the Armed Forces did not have authority to order the defendant to submit to induction, and that the action of the agency and the subsequent orders of the military authorities were void, illegal, contrary to the law, contrary to the regulations, contrary to the Selective Training and Service Act, arbitrary and capricious, and in violation of the Constitution, the due process clause of the Fifth Amendment. And, moreover, their denial of his right to file additional evidence and their rejecting of that evidence described in Defendant's Exhibit "A" constituted a denial of the defendant's rights of procedural due process guaranteed by the Selective Service Regulations, the Selective Service Act, and the Constitution of the United States, and that such denial of procedural due process was in conflict with the due process clause of the Fifth Amendment. Moreover, the defendant says that if this witness were permitted to be examined it would establish that the administrative agency through the Local Board had written a false letter to the Board of Appeals, stating that he devoted only three days per week to the performance of his ministerial duties, and also in writing the Board of Appeal that he was denied 4-D exempt classification because his name did

not appear on the list, which is a denial of the procedural due process, contrary to the Fifth Amendment. Moreover, that if the Government's construction is adopted upon the Acts and Regulations by this Court, it would deny the defendant his right to challenge the action of the administrative agency, the classification, its rulings and orders of the agency and of the military authority, and would deprive the defendant of his Constitutional rights, because the record shows that he has exhausted his administrative remedies and is in a position to challenge the illegality of the Selective Service Regulations and Selective Service orders; and that by reason of all the foregoing he will be abridged of his rights and liberties, contrary to the Fifth Amendment, denying him a judicial trial as to the illegality of the administrative action, contrary to the Third Article of the Constitution; and that the construction placed upon the Acts and Regulations would convert the Act and the Regulations and law into a bill of attainder, contrary to Clause 3, Section 9, Article 1 of the United States Constitution.

Mr. Mashank: This offer is objected to, for the reason it is incompetent, irrelevant and immaterial and does not prove or disprove any issue in this case.

The Court: We sustain that objection.

Mr. Covington: We except, and incorporate the reasons stated in the offer as part of the reasons for the exception.

(NO CROSS EXAMINATION)

FRANK E. PIREAUX, a witness called on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q. Would you be kind enough, please, to state your full name, for the benefit of the jury; and your age, your address and your occupation? A. Frank Evans Pireaux; fifty; attorney at law; 14 Court Square Arcade, Washington, Pennsylvania. Do you want the occupation?

Q. Please. A. Member of the Appeal Board, Area 8.

Q. And also, you are a member of the Bar of the State of Pennsylvania, are you not? A. That is right.

Q. And how long have you been licensed to practice law in the State of Pennsylvania? A. Since 1925.

Q. And you are practicing at present actively at Washington, are you not? A. Since the first of the year.

Q. And how long have you been located at Washington, that is, how long have you been connected with the Appeal Board of Washington County, please, sir? A. Since its organization in December, 1940; not, however, as a member.

Q. Well now, tell us the history of your connection with the Board, please. A. At its creation Judge Crumrine was the member representing Washington County, and I did the clerical work up until his resignation in—last year, I think it was July, or— I am not certain of the dates.

Q. Approximately. A. I think it was July.

Q. All right, sir. A. (Continuing)—when I was appointed a member. I am not certain of the date of my appointment.

Q. But you were then a member of the Board of Appeal during this year, 1944? A. W. J. Davidson—

Q. Who else were members of the Board of Appeals during this year, 1944? A. W. J. Davidson—

Q. And state his occupation, please, and where he re-

sides, if you know. A. I think he is a banker—

Q. And where his place of business is located.

A. Connellsville, Pennsylvania, Greene County.

Q. And the other members? A. Dr. J. H. Hazlett, Waynesburg, Pennsylvania, practicing medicine; George E. Barry, Greensburg, and I believe he is in the printing business.

Q. And any other? A. George S. Barnhart, also of Greensburg; I think his postoffice is R.D.; and he is a banker and farmer.

Q. Is that all of them? A. That constitutes the Board.

Mr. Mashank:

Q. Connellsville is in Fayette County, isn't it, instead of Greene County? A. Connellsville is in Fayette County.

Q. I thought you said Greene County; you meant Fayette? A. I meant Fayette. We have four counties.

Mr. Covington (at side bar): I propose to show by this witness that the case of William Murray Estep, the defendant in this case, was fully considered by the Board of Appeal, as is reflected in the file; and that if I was permitted to examine this witness I would develop the following facts,—That all of the evidence in the file was reduced to writing; that the Board of Appeal did not consider any evidence not reduced to writing, but only evidence in writing; that it found as a fact that the Watch Tower Bible & Tract Society was a recognized religious organization under the Act and was the governing body of that group of missionary ministers known as Jehovah's Witnesses, a recognized religious organization under the Act; that the Board of Appeal found that William Murray Estep was a regular minister of that Society, duly recognized and regularly performing his duties as such minister of the Watch Tower Bible & Tract Society from 1936 to 1941; that they found that William Murray Estep was a regular minister and ordained and duly recognized, and

regularly performing his duties as a minister of said Watch Tower Bible & Tract Society as an ordained minister from 1941, October, to the present time; that the Appeal Board did not find that he was not recognized by the Watch Tower Bible & Tract Society as an unordained minister from 1936 to 1941; they did not find that he was not recognized by the Watch Tower Bible & Tract Society as an ordained minister from 1941 to the present; that they did not find that he was not ordained in 1941 according to the regulations, but they did find that he was ordained in 1941, October, according to the regulations of the Watch Tower Bible & Tract Society and Jehovah's Witnesses; that they did find that he was devoting substantially his full time to the performance of his work as a representative of the Watch Tower Bible & Tract Society; that they did find that he had dedicated his entire life to the performance of his duties as a prophet evangelist and as a missionary of the Watch Tower Bible & Tract Society and of Jehovah's Witnesses; that they did not find any evidence which showed that the defendant was not devoting his full time and had not dedicated his entire life to the performance of his duties as a representative minister of the Watch Tower Bible & Tract Society; that they did find that he performed functions, ceremonies and duties which are performed normally by the clergy of the recognized religious organizations; that they did not find that the defendant fictitiously or falsely claimed to be a duly ordained or regular minister of the Watch Tower Bible & Tract Society, as claimed by the defendant; that the Appeal Board did not find any written evidence in the file which disputed the claim of the defendant that he represented the Watch Tower Bible & Tract Society as a regular minister before October 1, 1941, and did not find any evidence that the defendant was not rep-

resenting the Watch Tower Bible & Tract Society as a full-time ordained minister of that Society since October, 1941; that the Appeal Board cannot point out from the file wherein the defendant does not fit Opinion No. 14 of the Selective Service System concerning the ministerial status of Jehovah's Witnesses; that the only reason they did not classify the defendant as a regular or duly ordained minister of religion was because his name did not appear on the official certified list of the Pioneer Ministers circulated by the Watch Tower Bible & Tract Society to all State Headquarters, and that if his name had been on such list he would have been classified in Class 4-D as a duly ordained minister of religion, without question. The Board considered the letter written by the Local Board, to the effect that the defendant's name did not appear on the certified list; and they also considered the letter written by the Local Board that they had found that he devoted only three days each week to his ministry, which letter, as above stated, was contrary to the record, the facts and affidavits. Moreover, that if this witness was permitted to testify, he would testify that they were not allowed to consider the affidavits appearing in Defendant's Exhibit "A", because they were not incorporated in the file, and if they had been placed in the file they would have been considered, and it may have been that a different result would have been reached, depending, of course, upon a review of such affidavits and giving such weight to them as the law required. That, if permitted to examine the witness along these lines, we would be able to establish that the administrative agency had no evidence which disputed defendant's claim for classification in 4-D exemption, exempting him from training and service; that the action of the agency was contrary to the undisputed evidence, in excess of its statutory authority,

and that it did not have jurisdiction to order the defendant to perform services; that the finding of the agency was contrary to the evidence, unsupported by substantial evidence, without support of any evidence, contrary to the regulations, contrary to law, contrary to the Selective Training and Service Act, arbitrary and capricious, and in violation of the Constitution, due process clause of the Fifth Amendment. That if this offer of proof and this line of testimony is not permitted to go into the record, the construction placed upon the Act and Regulations by the Court, which denies this defendant the right to challenge the action of the administrative agency, the classification, its ruling and the orders of the agency and of the Armed Forces, would deprive the defendant of his Constitutional rights, because it denies him due process of law, contrary to the Fifth Amendment, denies him the right to judicial trial as to the administrative action, in defense to the indictment, contrary to the Third Article of the Constitution; and that the construction placed upon the Act has converted the Act and Regulations thereunder into a bill of attainder contrary to Clause 3, Section 9, Article 1. That is the offer of proof in connection with this witness.

Mr. Mashank: This offer is objected to, for the reason it is incompetent, irrelevant and immaterial, and does not prove or disprove the issue in this case.

The Court: We sustain this objection.

Mr. Covington: Now, Your Honor, the reason I stepped around here to side bar, instead of propounding questions that would have been objected to, was pursuant to the suggestion of Mr. Mashank we come around to the side bar when I got down to the point of these questions that would be objected to. Is that not correct?

Mr. Mashank: Yes, that is correct.

Mr. Covington: There is no question but that I could propound and would propound the questions that would elicit the information stated in this offer of proof; and if those questions were propounded you would object to them for the reasons stated?

Mr. Mashank: Sure.

Mr. Covington: There will be no question but that this offer of proof is made in the proper manner required by law. Is that right?

Mr. Mashank: That is right.

Mr. Covington: As well as the previous offer of proof, which was made in connection with the witness Reese. Is that right?

Mr. Mashank: Yes.

The Court: I asked you to come to side bar because I wanted to have the offer of proof made at side bar.

Mr. Covington: Rather than have me propound the several questions and he would object to them, and then we would come around to side bar; and that was done to facilitate and speed the matter up, wasn't it?

The Court: Yes.

Mr. Mashank: That is right.

(NO CROSS EXAMINATION).

CHARLES R. HESSLER, a witness produced on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q. Would you please state your name?
A. Charles R. Hessler.

Mr. Mashank: If the Court please, I would like to have an offer at side bar as to what is proposed to be proved by this witness.

Mr. Covington: I would like to first fix the qualification of the witness before—pursuant to our understanding, before I get into the section of evidence that the Court says is not admissible, in order that he may be properly identified.

Mr. Mashank: All right, go ahead.

Mr. Covington: When I get down to the point where the objectionable part is reached, I shall come to side bar, as admonished by the Court.

Q. Where do you live, Mr. Hessler? A. West Lake, Ohio.
Q. And how long have you resided there?
A. Since 1941, September.
Q. And before that where did you reside? A. From 1936 until September, 1941, I resided here in Pittsburgh.
Q. And how long did you reside in Pittsburgh?
A. 1941—from 1936 to 1941.
Q. And before that where did you live?
A. Patterson, New Jersey.
Q. And how long were you at Patterson, New Jersey?
A. About twenty-five years.
Q. Mr. Hessler, what is your occupation?
A. I am a minister of the gospel.

Q. And in connection with what organization do you function as a minister of the gospel? A. Associated with the Watch Tower Bible & Tract Society, of Brooklyn, New York.

Q. And how long have you been associated with that organization as one of its ministers of the gospel?

A. I have been associated with them since 1917, and since 1921 I have been their presiding minister for Patterson, New Jersey, 1921 to 1935; and from 1936 to 1941 I was their representative or presiding minister here in Pittsburgh.

Q. And during that time did you have within your jurisdiction and under your supervision various evangelists that were preaching under your direction? A. Yes.

Q. Now, what other positions did you hold with the Watch Tower Bible & Tract Society?

Mr. Mashank: That is objected to, as being immaterial to this issue.

The Court: We sustain the objection.

Mr. Covington: I will make an offer of proof, then. (At side bar) If this witness would be permitted to testify, he would show that he was also—after having been the presiding minister of the Pittsburgh congregation was made presiding minister of the entire district and supervised not only the Pittsburgh congregation but the congregations located in Washington County and elsewhere in this area; that since his association with the Watch Tower Bible & Tract Society here in Pittsburgh he became acquainted with William Murray Estep, the defendant in this case; that he knows William Murray Estep since 1936; that at that time William Murray Estep was attending the divinity school for the preparation of ministers conducted under the supervision of the Watch Tower Bible & Tract Society in Pittsburgh; that he knows that Estep was a

regular attendant one time each week at such school for the purpose of receiving instruction and training to help him in his regular ministry and to train him to become ultimately an ordained minister; that he knows that Estep attended the Watch Tower School of Ministry, a divinity school located in Washington County, and attended that on regular occasions; that these schools conducted by the Watch Tower Bible & Tract Society are conducted regularly each week, three times each week; that the purpose of these schools where Estep attended was to teach and train ministers and students preparing for the ministry; that the textbooks of such schools were the Bible primarily, and incidental, subsidiary and ancillary to the Bible as the main textbook the Watch Tower publications and other Bible helps were used; that this course of ministry covered primarily the study of the Bible and Bible prophecies, and was also a course of instruction covering study of Bible concordances, Bible dictionaries and their use, study of translations of the Bible, study of various versions of the Bible, and the study of Bible history, and study of different manuscripts. Moreover, there was regularly taught in this school a course in public speaking; that, in addition to that, lectures, sermons and discourses were delivered on these various subjects for the instruction of these students preparing themselves for the ministry, and also ministers who were attending for the purpose of keeping up to date on current events within the organization and to obtain better means of improving their teaching and preaching; that there was also a regular study of Bible helps published by the Watch Tower Bible & Tract Society for the sole purpose of preparing and training men for the ministry and for teaching them how to best conduct themselves as ordained ministers, both publicly and privately; that, in addition to that, the Witness would testify that he was the president of a reli-

gious corporation organized under the law for the purpose of operating a school specially created for the purpose of instructing young children of Jehovah's Witnesses who had been excluded from public school on account of their refusal to salute the flag, and that as a part of the course of instruction of this school it was also provided and operated for the purpose of training young ministers in preparation for the ministry; that this school was established in 1935, and that the regular course provided the same course of study as is to be found in the public schools from Grade 1 to Grade 12; and that in addition to that a course in Bible training and ministry training was provided, which included the reading of the Bible, the study of Bible characters, the study of Bible history, the use of Bible dictionaries and concordances, study of Bible stories, study of Bible helps, study of Bible tracts such as the Watchtower Bible & Tract Society publications, and the study of ways and means of more effectively preaching the gospel; all of which was for the purpose of preparing these young Jehovah's Witnesses to become competent skilled ministers of the gospel. It was not a Sunday school, but it was conducted as a school in preparation for the ministry, in addition to the public courses or secular subjects; that the children were required, in addition to the recitation hours, to study from three to four hours a day on regular studies such as they would receive in the public schools, if permitted to attend; also, in addition to recitation hours, in connection with the Bible course and minister-training course they were required to study on an average of two hours daily; that the course lasted from September of one year to May of the following year; that this witness has personally seen Estep in attendance at the Watch Tower school at Pittsburgh and in Washington County, and he knows also that he faithfully and regularly attended the school at Gates, Pennsylvania, op-

erated by this religious corporation for the purpose of training ministers in preparation for the ministry; that he knows that Estep successfully completed that course and within one year after his having completed that course he became an ordained minister. He knows, too, that while Estep was pursuing this course of study he acted also as a regular minister and as a part-time preacher, evangelist missionary, on behalf of the Society, when he was not in attendance at school or when he was not studying; that he has seen Estep faithfully preach the gospel, following in the footsteps of Christ Jesus, by calling from house to house and by making calls upon the people and by conducting Bible studies in the people's homes, without charge or obligation,—all of which work was done by Estep as an ordained minister of the gospel, and it was not done by him as a lay worker; that he has seen Estep grow and increase under this training in his belonging with the organization as a minister; that he has seen this development in this young man under his supervision as an officer of that school and as an officer of Watch Tower Bible & Tract Society since the man was very young; he knows that Estep is recognized by the Watch Tower Bible & Tract Society as a minister, and that he personally authorized Estep to begin preaching as a part-time regular minister in 1936; that Estep was not recognized as a lay worker, but that he did all of the work that he performed as a minister of the gospel; that he knows that Estep stands in relation to Jehovah's witnesses in the same way that the orthodox clergy stand in connection with their denominations; he knows that Estep is capable of performing ceremonies such as burial ceremonies; baptismal ceremonies, and other ceremonies usually performed by Jehovah's Witnesses in the discharge of their preaching duty; he knows Estep was ordained as a full-time minister in October, 1941, and that he has regularly and continually served in that

capacity ever since, performing on the average of 150 hours a month of actual preaching in addition to many, many hours used in preparation for the performance of his ministerial duties; that since leaving Pittsburgh he has kept in touch with Estep by regular contact and knows that he still continues to preach the gospel and is recognized in the capacity stated; that since Estep has been in Ohio in the last six months, he knows, too, that Estep has continued to discharge his duties in connection with his ministerial work in Ohio during the last six months. This evidence is offered for the de novo consideration of the Court, to prove de novo, outside of the Draft Board files, that the defendant is performing work and has performed work at all times. It is offered for the purpose of corroborating the defendant's claim before the Local Board; and it is also offered for the purpose for the Court to consider de novo the action of the administrative agency. And if this Court will consider this evidence, it will show that the Selective Service System had no statutory authority whatsoever or jurisdiction to hold that the defendant was liable for training and service, but on the contrary the Court would find that the defendant is an ordained minister of religion, exempt from all training and service; and that the orders of the administrative agency and of the Armed Forces were in excess of the jurisdiction conferred upon them by law, and that the orders on which the indictment is based are void. And the Court has the authority under its general jurisdiction to inquire de novo as to whether the defendant is in fact a minister and is in fact thus exempt, in addition to the power of the Court to review the Draft Board file; and thus it would be shown that the defendant was exempt from all statutory duty; that the action of the administrative agency in classifying him as liable for duty and the subsequent orders on which the indictment was based are void, illegal, contrary to the

Acts and Regulations, and that the Constitutional rights of the defendant have been violated, in that he has been denied his liberty without due process of law; and that such orders are without statutory authority and in excess of the jurisdiction of the administrative agency and the military authorities. Moreover, if this evidence is not received under the de novo jurisdiction of the Court to hear de novo the status of the defendant under the Act as an exempt minister, the construction placed upon the Acts and Regulations, which would require the defendant to comply with the orders as a condition precedent to judicial review of this question and to challenge the action of the agency, and which denies the defendant the right to challenge the action of the agency at this time and the subsequent rulings, orders, and the orders of the military authority, deprives the defendant of his Constitutional rights, denying him due process, contrary to the Fifth Amendment, denying him the right of judicial trial, contrary to the Third Article of the United States Constitution; and that the same construes and converts the Act and Regulations thereunder into a bill of attainder. And in support of this right of the Court to receive this evidence de novo, the attention of the Court is called to the case of *Crowell v. Benson*, 285 U. S. 22, and the case of *Yonkers v. United States*, decided at the last term of the United States Supreme Court, reported in 320 U. S. 685.

Mr. Mashank: Objected to, as being incompetent, irrelevant and immaterial, and not proving or disproving any issue in this case.

The Court: Sustain the objection.

Mr. Covington: Exception. Now, if the Court please, in order to save time,—there are three other witnesses who would testify to the same effect. I want to call

them, and I will ask their names and have them give their background, and then can we have it understood that this offer that has been made will apply to their testimony, too, because it will be substantially the same?

Mr. Mashank: And that I will make the same objection and there will be the same ruling of the Court.

The Court: Wouldn't it be sufficient for your purpose, that you offer to prove this by additional witnesses?

Mr. Covington: I will get their names, and we will do that right now.—At this time the defendant calls to the witness stand successively the witnesses STEWART, McKNIGHT, SINGER and FERREE, who are supervising, presiding elder ministers of various congregations of Jehovah's Witnesses in and around Pittsburgh, who have been acquainted with the defendant since 1927, and who would testify to each and every one of the foregoing particulars mentioned in the offer of proof in connection with Charles R. Hessler; and that the foregoing offer of proof in connection with the testimony of Charles R. Hessler is incorporated herein, as though repeated at length, and offered for each and every one of the purposes stated in that offer of proof; and each and every argument in favor of the offer of proof made in that offer is incorporated here as though repeated at length. And this offer in connection with these four witnesses is made in this manner at the suggestion of the Court, and by agreement of counsel, so as to facilitate the time of the court and to save the time of the court, and facilitate the offer of proof by stating it in this way; that if I were to call these witnesses I would propound questions that would call for these answers; and, since the Court has ruled and it being held that these issues are not material, I have at the suggestion of the Court and with the agreement

of the District Attorney made the offers in this manner, which is satisfactory to the Court, as far as the question presented is concerned.

Mr. Mashank: That is right. I would make the same objection, and there would be the same ruling.

The Court: We sustain the objection.

Mr. Covington: We except, Your Honor. We except not only on this, but in connection with the ruling as to the testimony of Mr. Hessler.

The Court: The exceptions will be noted.

(Short recess taken at this time).

WILLIAM MURRAY ESTEP, the defendant, produced in his own behalf, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q. State your full name, your age and your occupation.

A. My name is William Murray Estep; I am twenty-two; and I am an ordained, full-time minister of the gospel.

Q. Where were you born, Mr. Estep?

A. Canonsburg, Pennsylvania.

Q. Who were your father and mother?

A. Mr. and Mrs. Elihu Burrett Estep.

Q. Have you lived in and about Canonsburg all your life? A. I have.

Q. Where do you live now—in Canonsburg still?

A. Yes. My residence address is 195 Summit Avenue, Canonsburg, Pa.

Q. And what other, temporary address do you have?

A. The address which I have, where I am carrying on my ministerial activities, is 885 Minoto Avenue, Akron, Ohio.

Q. How long have you been in Akron?

A. Since April, 1944.

Q. And where did you go to school? A. I attended school at Third Ward School, Canonsburg, Pennsylvania.

Q. In what grade did you enroll in the Third Ward School? A. I enrolled in the first year of school, in 1928.

Q. And how long did you continue in that school?

A. I continued through the seventh grade and about two months in eighth grade, and then I was expelled in 1935.

Q. In 1935? A. Yes, sir.

Q. Why were you expelled from school?

Mr. Mashank: Just a minute. That is not material to this issue.

Mr. Covington: I would like to show, may it please your Honor, the reason he was expelled from the school, for I think it is material; it would be in the jury's mind, and they are entitled to know.

The Court: Come to side bar.

Mr. Covington (at side bar): I propose to show that this witness was expelled from the Canonsburg Public School because of his conscientious refusal to salute the flag, and it is a part of his life's history. It is a fact that he didn't quit, and it is a fact that necessarily has to be developed in the evidence that he was expelled from this school; he didn't quit this school. And therefore he had to go to another school. I am just developing his history. It is not injected for any other purpose, other than to show the truth of his background, and for no other purpose. And since it is a fact,—moreover, it is well known by everybody, and the Court can take judicial notice of it as a fact—that Jehovah's Witnesses do not salute the flag, and the Supreme Court of the United States has held they do not have to salute it.

The Court: Do you propose to inject the Supreme Court decision in this case?

Mr. Covington: No, I do not propose to do that.

The Court: I can't see any other purpose.

Mr. Covington: No, no, I tell you I do not. But this is a part of his history and his background, and we are entitled to have the jury know it. He has said he went there until the eighth grade, and he didn't quit, he just wasn't permitted to go there any longer.

Mr. Mashank: What if he had been expelled for some serious crime, say in 1936, certainly they wouldn't permit us to ask him why and what he was sentenced for, and so on. That has no bearing in this case.

Mr. Covington: You would be entitled to ask him, to affect his credibility, if it was a serious crime.

Mr. Mashank: Whether this man salutes the flag or he doesn't, and he was excluded from school for that reason, or what happened eight years ago, it has no bearing in this case, and I object to it.

Mr. Covington: I submit, Your Honor, that this doesn't come within the general ruling which has been heretofore made as to judicial review of the Draft Board's classification, and I submit we are entitled to it, we are entitled to put it in to show this man's background.

The Court: We sustain the objection.

Mr. Covington: Except.

Q. Mr. Estep, after you were denied the right to attend the public schools at Canonsburg, where did you go from there to school? A. I enrolled in the private school that was operated by Jehovah's Witnesses for other Jehovah's Witnesses who had been expelled, and this school is located at Gates, Pennsylvania.

Q. And when did that school start? When was it established? A. In 1935.

Q. And when did you enroll in that school? A. I enrolled shortly after I was expelled from public school in 1935.

Q. And what course of study did you pursue at that school? A. We had a regular secular course—

Q. What subjects generally did that cover, from what grades? A. It covered from the first through the twelfth.

Q. All the regular school studies? A. All the regular school subjects; and then, in addition thereto, there was a special course in Bible study and the study of Bible dictionaries, the study of Bible characters, the meaning of Bible prophecies, and, in short, a complete Bible education to fit the children of that school for further ministerial activities on their graduation.

Q. Was that conducted as a Sunday school, or in what way was it conducted?

Mr. Mashank: That is objected to, as being immaterial to this issue.

The Court: Oh, we can't go into the manner of conducting the school. We sustain the objection.

Mr. Covington: We except.

Q. How long did you attend that school?

A. From 1935 through twelfth grade, graduating in 1940.

Q. And what courses were you graduated from, what training? A. I passed every secular subject and also passed an examination in the subjects of Bible study.

Q. On what date were you graduated? A. It was the latter part of May, 1940; I don't remember the exact date.

Q. Now, are you one of Jehovah's Witnesses?

A. I am; I am a missionary evangelist, one of Jehovah's Witnesses, under the direction of the Watch Tower Bible & Tract Society of New York.

Q. And how long have you been one of Jehovah's Witnesses? A. I was authorized by the Watch Tower Society to preach as a part-time and also a full-time minister since 1936.

Q. Separate them, please. A. A part-time minister since 1936 until October 1, 1941, when I was ordained by the Watch Tower Society as a full-time minister, a pioneer of the Watch Tower Society.

Q. When? A. October 1, 1941.

Q. And while you were preaching part time did you continue to pursue the course of ministry at this school, in preparation for your ordination?

A. I did. I pursued a course of study in school and outside of school, and also in the Bible school meetings which were held by Jehovah's Witnesses on two days a week; and I continued to pursue this course of Bible education clear through, up until the present time, even after graduating from school.

Q. Was that in addition to the courses you have mentioned as having been taught to you at the Gates Kingdom School? A. That is in addition to the Bible training we received as part of our schooling in the private school at Gates, Pennsylvania.

Q. And what course of training did you receive in the special divinity schools conducted by Jehovah's Witnesses?

Mr. Mashank: If the Court please, I don't want to be objecting all the time, but I don't think this is material. He has already stated he is a minister; he said he was a member of the Jehovah's Witnesses; he has stated what education he has had; and I think that is enough to show the jury who this man is. I don't think we have to have testimony every time he took a special course. I object to further examination along this line.

The Court: I don't think so, either. We sustain the objection.

Mr. Covington: We except; and we will make an offer of proof in a few moments.

Q. When did you make up your mind to become a minister?

Mr. Mashank: That is objected to, as being irrelevant and not material to this issue.

The Court: We sustain the objection.

Mr. Covington: We except, and will make an offer of proof in a minute.

Q. What training did your father and mother give you, if any, relative to your preparation for the ministry?

Mr. Mashank: Objected to, as irrelevant and immaterial.

The Court: We sustain the objection.

Mr. Covington: We except to the ruling of the Court and will make an offer of proof in a moment.

Q. Give us the details of your course of study as prescribed in your course of study in your preparation as a minister at the Gates Kingdom School.

Mr. Mashank: Objected to, as being immaterial.

The Court: Sustain the objection.

Mr. Covington: Except to the ruling of the Court, and I will make an offer of proof in a moment.

Mr. Mashank: Well, let's make the offer now.

Mr. Covington (at side bar): This is a very long offer of proof, if Your Honor please, and if it is agreeable to the Court and the United States Attorney, I will state what it covers generally and then simply ask the reporter to copy it into the record. It shows how he became a minister and also goes into the details of his activity as a minister since he became an unordained minister, from the year 1936 to 1941; it takes

up the detail of his activities as a minister from 1941 to this date; and it goes into the fact that he has been duly ordained and how he was ordained and when, and the details of his ministerial activity are covered, and that is all it is. I will now make the offer of proof. If this witness is permitted to be examined further, he will testify as follows—and I will ask that the offer be simply copied into the record. (Said offer of proof reads as follows):

"I was born August 9, 1922. I attended school at Third Ward Public School, Canonsburg, Pennsylvania, being six years of age when I entered the first grade. I attended this school regularly each year, passing each grade through the seventh, until I reached the eighth grade. During the month of October, 1935, after attending the eighth grade for about two months, I approached the principal of the school and told him I could not conscientiously participate in flag salute ceremonies on account of the fact that it was a violation of my conscientious understanding of the law of Almighty God stated at Exodus 20:3, 5:

> "'Thou shalt have no other gods before me. Thou shalt not make thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me.'

Whereupon the principal thereafter called a meeting of the Board of Directors of the Canonsburg Public Schools and a hearing was had, and subsequently I was expelled from school.

"My Father and mother are Jehovah's witnesses. They had been active in the preaching of Jehovah's witnesses as ministers even before I was born. Accordingly, after I was

born and when I was able to understand, my mother and father taught me the Bible. As a part of their obligation as ministers of the gospel and Jehovah's witnesses, my father and mother brought me up in the way that I should go, that is to say, they brought me up in the nurture and admonition of the Lord, as stated in Ephesians. As far back as I can remember, my father and mother read to me regularly the Bible and explained to me the meaning of Bible prophecies and the example that Christ Jesus set for his apostles, disciples, and present-day Christians to follow. The Bible was read to me by either my father or my mother, and sometimes by both, morning, noon and night. They taught me the fundamental doctrines to be found in the Bible at a very early age, even before I enrolled in public school. From the time that I was able to talk and understand, they taught me the Bible, Bible prophecies and the fundamental views of Jehovah's witnesses. Frequently at the dinner table there was discussion of the Bible, and every evening before retiring to bed, my father and mother would cause us children to gather together in the house and there would be a daily home Bible study on various subjects, including the responsibility of a Christian of going from place to place, to preach the gospel of God's kingdom and tell others about these truths. Also there was conducted in the home regular public Bible meetings and studies on the Bible that were presided over by my father, and that were attended by others of Jehovah's Witnesses and people of good will, at which the Bible was used as the main text book, and ancillary text books published by the Watch Tower Bible & Tract Society and used by Jehovah's witnesses were also studied. These public meetings were held once a week for a number of years, until we began attending these studies in Pittsburgh. I and my brothers and sisters were encouraged, and, as a result of encouragement from our parents, attended regularly these public meetings that were held in our home. These public meetings were devoted to a study of the Bible and ancillary text

books provided by the Watch Tower Bible and Tract Society to provide immature persons, both young and old, with a means of acquiring a knowledge of the fundamental teachings of the Bible as conceived by Jehovah's witnesses. I attended the regular Bible studies in our home until 1930, at which time I was eight years of age.

"In addition to receiving home Bible education from my parents, who were ministers of the gospel, I also was encouraged, counseled and requested by my parents to attend the Bible school operated by the company or congregation of Jehovah's witnesses at Pittsburgh. I began to attend this school or congregational meeting of my own free will and accord at the age of nine, during the year 1931. Previous to that time my father and mother had taken me to these public meetings at the congregational gatherings as far back as I can remember. The school conducted by Jehovah's witnesses and the Watch Tower Bible and Tract Society at the Pittsburgh company of Jehovah's witnesses which I attended had a regular prescribed course of study. The Bible was the principle and basic text book. Incidental and ancillary text books were provided by the Watch Tower Bible and Tract Society and Jehovah's witnesses to aid in the systematic study of the Bible. These were the Watch Tower magazine, books and booklets published by the Society, and regular periodical Informants, etc. I attended this school one night a week, between one and two hours a night. These meetings were held on Sunday. The Bible was studied, together with the publications issued by the Watch Tower Bible and Tract Society. This school was conducted for the purpose of instructing ministers of the gospel regularly engaged in preaching and also to train students preparing themselves for the ministry. My father and mother caused me to attend this school as a student preparing myself for the ministry.

"In addition to attending the school regularly at the Pittsburgh Company of Jehovah's witnesses, my Bible studies in preparation for the ministry were continued by

home study by attending classes conducted in my own home under the direction of my father and mother.

"When I was still very young, my father and mother set before me the various occupations and professions that I could choose to train myself for. They laid before me, in addition to being a lawyer, doctor, etc., the highest of all callings and professions, namely, that of a minister of the gospel and to be a witness of Jehovah God. I understood that it was necessary for me, as a Christian, to preach the gospel of God's kingdom to the people as an only hope of the world. My father and mother informed me that if I expected to get life everlasting, I must preach the gospel of God's kingdom as did Christ Jesus and the apostles, who went from house to house and who also devoted their entire lives to preaching 'The Kingdom is at hand', and that the Theocracy was the only hope for mankind. My parents informed me that I would best serve my own welfare by undertaking to follow in the footsteps of Christ Jesus and the apostles by preparing myself for the full-time ministry. Among all these professions to choose from, I agreed with my parents that I would, when I became fully qualified, devote my entire life and full time to preaching the gospel of God's kingdom as an ordained minister of Jehovah God, under the direction of the Watch Tower Bible and Tract Society. To that end we agreed that I should continue my study in preparation for the ministry.

"Thereafter my father and mother permitted me and encouraged me to continue to attend the school conducted by Jehovah's witnesses at the congregation or company of Jehovah's witnesses at Pittsburgh, and also required me to continue Bible study at home, as well as participate in the daily Bible studies conducted by the family, in preparation for the ministry. I did attend regularly at the Pittsburgh company until 1936.

"In 1935 I was expelled from public school at Canonsburg. Also in 1935, the Gates Kingdom School was established by Jehovah's witnesses at Gates, Pennsylvania, and

I enrolled that year. This school was established to accommodate children of Jehovah's witnesses with the equivalent of a public school education from the first to the twelfth grades. It provided also, as a part of the regular curriculum of study, a course of study in the Bible—Bible history, Bible characters, use of the Bible dictionary, regular Bible reading, Bible stories, and regular study of the principles, doctrines and precepts of the Bible as conceived by Jehovah's witnesses and explained in the Watch Tower publications. The course of study in these Bible subjects was designed for the purpose of preparing these children who attended the course of study as students for the ministry. The course of study in the Bible was regular; it was conducted daily. The school provided instruction in secular private school education that was equivalent to the same course of study on the same subjects taught in public school. This was in addition to the Bible training.

Moreover, during the time that I was enrolled at the Gates Kingdom School, I returned to my home during weekends, and regularly attended the Watch Tower study meetings on Sunday which were conducted under the auspices of Jehovah's witnesses at the congregation located at Washington, Pennsylvania. The Watch Tower study meetings were devoted to a study of the Bible, together with the Watch Tower magazine, for at least one hour each week. Additionally, I attended the service meetings conducted under the auspices of Jehovah's witnesses at the congregation located at Gates, Pennsylvania, which were conducted by regular ordained ministers of Jehovah's witnesses primarily for the benefit of the ordained ministers and students preparing for the ministry. The course of instruction was pursued regularly once each week, one hour each week, and was participated in by all of the students, in answering questions, giving comments and short discourses. The subjects covered at this meeting were ways and means of properly and more effectively preaching the gospel; proper conduct as a minister, an ambassador of God's Theocratic Gov-

ernment; special courses in Bible concordances; Bible translations; versions and history of Bible versions; source of Bible manuscripts; and public speaking.

"I regularly attended the Gates Kingdom School and pursued all of the subjects taught by that school from the year 1935 to 1940. Each year I was promoted from one class to the next highest class. I never failed any subject. Finally, in 1940, I was graduated from the Gates Kingdom School after having successfully completed all of the courses of study prescribed, including those of the twelfth grade. Additionally, I successfully completed the course of study conducted by the school to provide me with Bible training as a student for the full-time ministry.

"The course of study which I began by attending the Watch Tower congregational school meetings at an early age was not concluded when I was graduated from Gates Kingdom School. As a matter of ~~fact, I have~~ pursued and continued the course of study prescribed by the Watch Tower through attendance of service meetings, Watch Tower meetings and other studies at various congregations and companies of Jehovah's witnesses since graduation from the Gates Kingdom School. During the time that I was attending the Pittsburgh Company congregational school at Pittsburgh, I studied the Bible and the Watch Tower publications in preparation for the ministry on the average of one hour a day in personal home study of the books, booklets, Bible and other publications provided by the Watch Tower Bible and Tract Society. This daily study was in addition to the regular home Bible discussion that was had by the entire Estep family under the direction of father and mother.

"After enrolling in the Gates Kingdom School, I devoted approximately three hours daily to a study of all the regular prescribed courses of study, such as reading, writing, arithmetic, history, etc., which were the regular courses of study taught in public school. This three-hour period of study included several study periods in the school

as well as study before and after school. In addition to the regular three-hour study period for these subjects, I devoted an additional two hours to a study of the Bible, Bible reading, Bible characters, Bible history, Bible dictionaries, Bible stories, and Watch Tower literature. This study was for two hours each day during five school days of each week. After having been taught by my parents that the ministry was the only occupation that was worthwhile to follow in order to gain everlasting life, I agreed, at the age of nine, that it was necessary for me to begin to practice what I believed to be the responsibility of a Christian. My father and mother went from house to house as ministers, preaching the gospel. They invited me to come along with them, in order that I might learn how to preach, how to answer questions on the Bible, and how to explain to people at their doors about God's kingdom as the only hope of the world. At the age of nine I began to go forth with my father and mother regularly once each week and call from house to house. At that time I was not an ordained minister, but I was a student preparing myself for the ministry, and I desired to learn how to preach effectively so that I might make preaching my life's work. After having studied the Bible under the tutelage of my father and mother, and having been trained by them to act as a minister from the age of nine to the age of thirteen, I agreed to enter into a covenant with Almighty God whereby my life would be dedicated to the service of Him and His Kingdom by preaching the gospel as a regular or duly ordained minister until death.

"Although it may seem unusual that I became a regular unordained minister at such an early age, I had thoroughly prepared myself for the ministry under the supervision and instruction given me by my parents at home and by my attendance at the Watch Tower schools at Pittsburgh from the age of nine to the age of thirteen. During this time I studied on the average of at least one hour a day in preparation for my ministry. It is not unusual to read in the

Bible of children becoming consecrated to Almighty God at a very early age. Samuel was dedicated by his mother to the service of Jehovah God even before he was born, and as soon as he was old enough to be weaned from his mother's breast, he was placed in a temple and thereby became consecrated to Jehovah God in preparation for his full-time ministry when but a very small infant. Christ Jesus, at the age of twelve, began to teach and dispute with the scribes and Pharisees. Moreover, Timothy, a disciple of Christ Jesus, was a faithful companion of the Apostle Paul and was duly ordained as a minister of Almighty God while yet a youth, and the Apostle Paul wrote him: 'Let no man despise thy youth; but be thou an example of the believers.' (1 Timothy 4:12). The facts and the scriptures show that authorization to preach is not limited to adult persons, nor is it confined to any particular age. It is determined solely upon qualification, learning, understanding and knowledge of the Bible and the requirements of the Lord concerning a Christian minister.

"After becoming a regular minister, I did not go forth immediately and devote my entire life to preach, but I continued to study at the Gates Kingdom School in preparation for my full-time ministry. From 1935 to 1940, while pursuing further studies in preparation for the full-time ministry, I continued to regularly preach, as did Christ Jesus and the apostles, from house to house, once each week. While attending the Gates Kingdom School I acted as a part-time minister of Jehovah's witnesses under the direction of the Watch Tower Bible and Tract Society. Upon being graduated in May, 1940, I continued the Bible studies that I was pursuing at Gates Kingdom School and also after being graduated I began to devote more time to the performance of my ministerial work, aiming to ultimately become a full-time pioneer minister of the Watch Tower Bible and Tract Society. I had no secular work at the time of my graduation and did not intend to pursue any secular work at that time as a vocation, occupation or profession.

On the contrary, my only occupation at the time of my graduation was that of a minister of the gospel. From month to month I strived to put in more time in my ministry work. I devoted a large and substantial part of my time to preaching from house to house and publicly upon the streets, as well as making back calls upon the interested people. In July, 1941, I definitely decided to provide myself with the necessary finances and equipment to enter the full-time pioneer work, which I had agreed to engage in by my consecration at a very early age.

"In order to earn money and to provide myself with things that were necessary and decent, in July, 1941, I obtained a laborer's job to earn some money to obtain this necessary equipment. Christ Jesus followed the carpentry trade before he entered his full-time ministry. Likewise, I felt it proper to perform labor to earn money to give me a start in the full-time ministry, which as an evangelist and missionary would take me away from home and my folks, who were providing me with necessaries of life, put me on my own and require me to have some personal capital to sustain myself in times of need while pursuing my evangelistic missionary activity. I got a temporary job at the Surface Combustion Corporation, Pittsburgh, as a mason's laborer, which paid me 86 cents an hour. I worked at this job until September, 1941. I did not have to get a job to sustain myself, because my father and mother and family had sustained me and provided me with a place to stay, food to eat and clothing to wear, while engaging in the ministry after being graduated from Gates Kingdom School. I obtained this job for the purpose of building a personal surplus and savings account that would act as a fund to maintain me in my full-time pioneer missionary evangelistic work during times of need after leaving my parent's place of abode.

"While attending the national convention of Jehovah's witnesses at St. Louis, Missouri, in August, 1941, I became convinced that it was not the Lord's will for me to delay

entering the pioneer work any longer, but that I should enter upon the full-time pioneer work immediately. Therefore I filed a written application with the Watch Tower Bible and Tract Society, setting forth my background, my training and course of study in preparation for the ministry, and my desire to become a full-time pioneer evangelistic missionary of such Society. Said written application was received by representatives of the Watch Tower Bible and Tract Society at St. Louis, Missouri, in August, 1941, forwarded to the headquarters office of such Society in Brooklyn, and after due consideration, in September, 1941, such application was approved and I was appointed a full-time pioneer evangelistic missionary minister of the Society October 1, 1941. Thereupon I became a full-time ordained minister. This did not mean that I had not devoted substantially all of my time to the ministry prior to becoming a pioneer. As a matter of fact, I had devoted, as before stated, substantially the greater part of my time to the performance of my ministerial duties from the time of my graduation at Gates Kingdom School in May, 1940, to July, 1941. After graduation from the Gates Kingdom School in 1940, in addition to the performance of my missionary evangelistic work, to which I devoted a substantial part of my time, I was assigned to perform duties as Advertising Servant and as an assistant to the Company Servant of the Washington Company of Jehovah's witnesses, Washington, Pennsylvania. These duties required me to lead the others of Jehovah's witnesses in the company in the public preaching of the gospel by distribution of the Watch Tower and Consolation magazines upon the streets, at least three times a week for periods of from one and a half to two hours each time. Additionally, the duties as Advertising Servant required me to take care of the phonographs and phonograph records of the company which were used in the proclamation of the kingdom message from house to house, which phonograph records contained recorded Bible sermons used by Jehovah's witnesses to in-

troduce their gospel message to the people. This phonograph work was done under my direction as Advertising Servant and assistant to the Company Servant of the Washington Company of Jehovah's witnesses.

"During the year 1940, after being graduated from the Gates Kingdom School, I regularly delivered Bible discourses and sermons as a regular minister before the Washington congregation of Jehovah's witnesses, based upon Bible subjects, and which were aimed at encouraging them in following in the footsteps of Christ Jesus and the apostles, and maintaining their integrity as servants of Almighty God Jehovah. I delivered these sermons to the congregation not less than once a week. My duties as an evangelistic minister, preaching the gospel from house to house, from May, 1940, to September, 1941, as well as my duties as assistant to the Company Servant of Jehovah's witnesses of the Washington Company, required me to devote on the average of three hours a day to actual preaching from house to house, upon the public streets, and which included one hour each week to the congregation. Furthermore, I spent an average of two hours a day studying and further preparing myself for the preaching of the gospel from house to house, publicly and before the congregation from May, 1940, to September, 1941.

"Even after I was appointed as full-time pioneer minister of the Watch Tower Bible and Tract Society, on October 1, 1941, I continued to act as an assistant to the Company Servant in charge of the Washington congregation of Jehovah's witnesses, which duties as Advertising Servant and assistant to the Company Servant were performed in addition to my duties as a full-time pioneer minister. From October 1, 1941, to October 1, 1943, I acted as a full-time pioneer minister and as Advertising Servant of the Washington congregation of Jehovah's witnesses, devoting an average of 150 hours a month to actual full-time pioneer evangelistic missionary preaching from house to house and publicly upon the streets and by conducting Bible studies

in the people's homes, in addition to the time devoted to the performance of my duties as assistant to the Company Servant of the Washington congregation of Jehovah's witnesses, totaling an average of at least 175 hours to the performance of ministerial duties each month, exclusive of necessary time required in preparing for ministerial work.

"As a full-time pioneer missionary minister of the Watch Tower Bible and Tract Society, I was subject to being assigned and moved by the Watch Tower Bible and Tract Society to any territory designated by them. I was ordered by the Watch Tower Bible and Tract Society to perform full-time missionary evangelistic ministerial work at a designated territory in the Lower Manhattan Unit of New York City, New York. I performed my duties as a full-time pioneer evangelistic minister under the direction of the Watch Tower Bible and Tract Society connected with the Lower Manhattan Unit congregation of Jehovah's witnesses, devoting not less than 150 hours for a period of one month.

"Thereafter I was assigned to do full-time pioneer evangelistic missionary ministerial work in territory assigned by the Watch Tower Bible and Tract Society at Uniontown, Pennsylvania, where I continued to perform my missionary evangelistic work, devoting at least 150 hours per month, from November, 1943, to April 1, 1944. The purpose of performing missionary evangelistic work in these communities is to help build up the congregation located in said communities by developing new interest amongst the people of good will towards Jehovah's witnesses. On April 1, 1944, I was assigned by the Watch Tower Bible and Tract Society to perform my duties as a full-time pioneer evangelistic minister in connection with the South Unit congregation of Jehovah's witnesses located in Akron, Ohio. Since April 1, 1944, I have been regularly performing my missionary evangelistic work in said territory assigned to me by the Watch Tower Bible and Tract Society at Akron, Ohio.

"At all times since I have been preaching from house to house as a missionary and evangelistic minister, following in the footsteps of Christ Jesus, I have performed the following duties:

"FIRST: As a minister of the gospel, I am required to go from house to house. Christ Jesus went from house to house; the Apostle Peter stated that we must follow in the footsteps of Christ Jesus:

> "'For even hereunto were ye called: because Christ also suffered for us, leaving us an example, that ye should follow his steps.' (1 Peter 2:21).

The Apostle Paul stated that he taught publicly and from house to house. Jehovah's witnesses are a society of missionary evangelists who have accepted the duty of carrying the gospel of God's kingdom to the people rather than expecting the people to come to them. At the present time in the United States, of the 130,000,000 people residing in this country, there are 70,000,000 people who do not belong to any religious denomination, and untold additional millions who do not regularly attend church congregations, although they may nominally belong to some church. These people are not heathens; on the contrary, many of them are of good will toward Almighty God, and desire to learn more concerning God's kingdom. In order that these millions of people can learn concerning the Theocracy as the only hope of the world, Jehovah's witnesses have answered their need by carrying the message to them in their homes. I, as one of this Society of missionary evangelists, go from house to house carrying with me printed literature containing Bible sermons or explanation of Bible prophecies showing that the time is near at hand when Almighty God shall dash to pieces and destroy all of Satan's organization, including the commercial, political, and ecclesiastical organizations on this earth, and destroy them utterly at Armageddon, together with all wicked persons who serve Satan the Devil. Said literature also explains to the people that following

such destructive act, there shall be set up in the earth a government of righteousness which shall stand forever, and bring to the people peace, prosperity, happiness and eternal life for those that are faithful; that in order to share the benefits of such righteous kingdom, it is necessary to study and to take their stand on the side of such kingdom, abandon organized religion and become a true Christian, following the footsteps of Christ Jesus.

"I approach the people at their homes with this literature in an orderly and kind way. I introduce myself as a minister, one of Jehovah's witnesses, preaching from house to house, calling upon the people to leave with them helps to enable them to pursue a course of home Bible study. If they are interested, I talk to them about God's kingdom, explain about the battle of Armageddon and the requirements of a Christian. I offer them the literature; if they desire it they take it. If they are able to contribute, I accept such contributions, which money is used to enable me to distribute literature to more people, including the poor. If the person is unable to contribute, I leave the literature free of charge. If they show sufficient interest, I call back upon them at a later date, without charge or obligation, and discuss with them Bible questions in which they are interested pertaining to the theme discussed in the literature left with them. If, after calling back on a person, and after he has studied carefully the literature left with him, he desires a Bible study established in his home, I agree to establish a Bible study whereby the Bible is used as the main text book and the literature is used as an ancillary text book. This Bible study I conduct as a regular and duly ordained minister. It is conducted without charge at least once a week in the home. Persons are invited to attend this study. I preside over the study and counsel those persons present in the word of the Lord, as a minister of the gospel.

"SECOND: In order to avoid not reaching any person and in order to reach those persons whom I am unable to contact by calling from house to house, like the Apostle

Paul I preach publicly, that is, upon the streets. This I do by distribution of the Watchtower and Consolation magazines, which I hold in my hand while standing at an appropriate place on the sidewalk. As the people pass, I call out appropriate Bible slogans based upon the Bible sermons contained in said magazines and offer them to the people upon a contribution. If any person is unable to contribute because of poverty, he is given the literature free of charge.

"THIRD: As above stated, in addition to preaching publicly and from house to house, my missionary evangelistic preaching requires me to conduct back calls. This back call work is done by calling back upon persons who have previously shown interest in the work that I am doing and a desire for me to answer Bible questions. I call back upon the people, taking my Bible and other literature and offering them to permit me to answer any questions that they have of and concerning the Bible, Bible prophecies and the literature placed with them.

"FOURTH: Additional duties performed by me as a regular and ordained minister of the gospel, carrying out my missionary work, is as above stated, in establishing and conducting book studies in the people's homes, which are based upon the Bible and Bible prophecy. This work is done by me as a minister of the gospel.

"FIFTH: I also preach regularly at the congregation of Jehovah's witnesses by delivering Bible sermons to the congregation in the Course in Theocratic Ministry maintained by the congregation of Jehovah's witnesses. Also I participate in the service meetings of such congregation by answering Bible questions and counseling those present. Also I attend and participate as a minister in the Watch Tower study meetings, aiding others present with my comments and counsel based upon the Bible. As a part of congregational work and duties, I also participate in the service meetings by making talks and comments explaining ways and means how we may better preach the gospel of

God's kingdom.

"These various duties before given by me have been performed by me since I began to preach as a regular minister in the year 1936. These duties increased as I have increased in learning, to the point where I was ordained in 1941, and to the present time, whereby my full time is devoted to the furtherance of my missionary evangelistic ministry work.

"Since 1936, and especially since 1940 to this date, I have at all times stood in relation to Jehovah's witnesses and the Watch Tower Bible and Tract Society in the same degree and to the same extent towards Jehovah's witnesses as do the orthodox clergy of the popularly recognized religious denominations, and additionally have preached and been recognized as a missionary evangelist standing in relation to Jehovah's witnesses and the Watch Tower Bible and Tract Society in the same way that missionary evangelists of the recognized orthodox religious denominations stand towards their denominations. I am qualified to perform and do perform the regularly recognized ceremonies prescribed by Jehovah's witnesses to be performed by their duly recognized, authorized regular and ordained ministers, such as baptismal ceremonies and funeral ceremonies. All of the above ceremonies described by me I am qualified to perform as an ordained or regular minister in the discharge of my duties either in connection with a congregation or as a missionary evangelist and are done by me as a duly recognized regular and ordained minister of the Watch Tower Bible and Tract Society, a duly recognized religious organization; and none of such duties are performed by me in a secular or non-ministerial capacity. This work is not done by me as a Sunday School teacher or as a lay church worker, but is done by me solely and exclusively in the capacity of a regular and duly ordained minister of the gospel, performing missionary duties as a missionary evangelist or performing congregational duties as a minister assigned to a congregation.

"I was ordained as a full-time pioneer minister in October, 1941. Before one can become an ordained minister, he must show that he possesses the necessary qualifications according to the rules and regulations of the Watch Tower Bible and Tract Society and Jehovah's witnesses. By questionnaire which I filed with the Watch Tower Bible and Tract Society in August, 1941. I showed that I possessed the necessary qualifications. In this questionnaire filed by me I showed that I had been associated with Jehovah's witnesses all my life and actively engaged in preaching the gospel as an unordained regular minister of religion of the Society and Jehovah's witnesses beginning in 1936, that I had been baptized in 1936, that I had attended the Watch Tower schools conducted by congregations of Jehovah's witnesses, that I had attended the Gates Kingdom School from 1935 to 1940, and that I desired to evidence my consecration to Jehovah God as one of his ministers of his gospel by undertaking as my life's work the full-time ministry, acting as a duly ordained missionary evangelist minister of the Watch Tower Bible and Tract Society, willing to go anywhere that I was assigned by the Watch Tower Bible and Tract Society and Jehovah's witnesses.

"Ever since 1941 I have officiated in the capacity of an ordained minister representing the Watch Tower Bible and Tract Society. Before 1941 I performed my duties as a regular or unordained minister of the gospel. I preached regularly as a minister of the gospel from house to house and otherwise as an unordained regular minister of religion from 1936 to 1941. During that time I continued to pursue my course of instruction in preparation for my full-time ministry, devoting during those years as much time to preaching as my studies for the full-time ministry would allow. After completing my studies for the full-time ministry in 1940, I, as above stated, began to devote much more of my time to preaching as a regular unordained minister, devoting from 1940 to 1941 as such regular or unordained minister a large and substantial part of my time. I have

never engaged as my occupation in any secular work. I have devoted some time to secular work temporarily for the sole purpose of earning a little money to sustain me in my ministry.

"From 1936 to 1941 I have been a student preparing myself to become a fully ordained minister of religion. At the same time during those years I also regularly performed ministerial duties as a regular unordained minister of religion. I have at all times since 1936 enjoyed the status and position with the Watch Tower Bible and Tract Society as a minister of religion, either as an ordained or a regular unordained minister of religion. At no time since 1936 to this date have I ceased to occupy such status with the Watch Tower Bible and Tract Society as a minister, either unordained or ordained, of the Watch Tower Bible and Tract Society.

"The Watch Tower Bible and Tract Society is the governing body of that society of missionary evangelistic ministers known as Jehovah's witnesses. The Watch Tower Bible and Tract Society and Jehovah's witnesses constitute a duly recognized religious denomination. I have been at all times duly recognized by such duly recognized religious organization as one of those regular or duly ordained ministers of religion from 1936 to this date."

Mr. Mashank: I object to this offer, Your Honor. It is not material to this issue at all; it doesn't prove or disprove any issue of this case.

The Court: We sustain the objection.

Q. Mr. Estep, when did you register with the Local Board No. 4, Washington County, Canonsburg, Pennsylvania? A. June 30, 1942.

Q. And at that time did you receive a questionnaire? A. I did.

Q. And did you fill it out? A. I filled it out and returned it to the Local Board.

Q. After you filled it out and returned it to the Local Board, did you file any other papers? A. Yes, sir.

Q. Well, it is in evidence, but it is Form 47 CO-form. Did you fill out and file a Form 47? A. Yes, I filled out a special blank for conscientious objectors and filed the same with the Local Board.

Q. Did you point out in that conscientious objectors form that you were a minister and claimed classification as a minister? A. I did; I claimed classification as an ordained full-time minister of the gospel.

Q. Now, after you filed your questionnaire and your papers with the Board, what if anything did you hear from the Board about your claim for exemption?

A. After I filed the regular questionnaire and also the conscientious objector's questionnaire I received a classification of 1-A from the Local Board, dated October 3, 1942.

Q. And after you got that classification what did you do?

A. I filed additional evidence with the Local Board, setting forth my position as an ordained pioneer minister of Jehovah's witnesses. This was in the form of the "Consolation" magazines and also the additional statement the provision for which was made in the conscientious objector's form, and also written statements setting forth my position as a fully ordained, full-time minister of the gospel.

Q. Signed by yourself? A. That is right.

Q. Now then, after you did that what, if anything, did you do about a hearing before the Board? A. At the time that I filed appeal to the Local Board from 1-A classification, I also asked for a hearing before the Board.

Q. Did you receive that hearing?

A. Yes, this hearing was granted October 21st.

Q. And will you tell us, please, what you discussed with the Local Board at the time you appeared for the hearing, and what you said to them in reference to your classification, and what they said to you in reference to the classification?

Mr. Mashank: Now, if the Court please, that is objected to. We cannot go into the classification or what the Board did, because, regardless of what was said down there, this court could not disturb those findings with reference to the classification. Therefore it is not material to this issue.

The Court: We sustain the objection.

Mr. Covington: We except to the ruling of the Court.

Q. Now, after you had your hearing, what if any steps did you take regarding an appeal? A. After I had my hearing I was notified by the Local Board that I was continued in 1-A classification and that my 4-D classification was denied, which I asked.

Q. When you say 4-D classification, that is the classification given ministers of the gospel. Is that right?

A. That is correct.

Q. You made a claim for that classification? A. I did.

Q. Now, after you received the notice that the Board had continued you in 1-A classification, after your personal appearance, what if any additional steps did you take?

A. I immediately filed an appeal through the Local Board to the Appeal Board, appearing and asking for a 4-D classification, which is a minister's classification.

Q. When was that? A. That was October 23, 1942.

Q. And after you took your appeal, what if any effort did you make further with the Board about additional evidence? A. I tried to file additional evidence in the form of affidavits with the Local Board, and these I delivered—

Q. Now wait just a minute. These affidavits that you have just now mentioned,—I show you Defendant's Exhibit "A", to which is attached an affidavit of William Murray Estep, dated October 17, 1942; an affidavit of C. R. Hessler, dated October 13, 1942; an affidavit of Earl Ferree, dated October 12, 1942. I show you those three affidavits and ask you whether or not those were the affidavits

that you took with you to the Local Board for filling in October, 1942. A. The three affidavits that was filed was that of—

Q. They have been mentioned there, that is enough. Now, the question I want to know, are these the affidavits that I mentioned? A. That is correct; three affidavits.

Q. Plus your own affidavit. Now, what happened when you presented these affidavits?

A. I was told that it was impossible to file these affidavits, as my case had then gone up before the Appeal Board.

Q. Now, what date was that? I mean, what month was that? A. I believe that was in November.

Q. The first part of November? A. Yes.

Q. Now, did you insist and ask that you be permitted to file these? A. I did; I said if it was passible at all, I should like these to go in to the Appeal Board, that they might be submitted in further evidence of my ministerial classification.

Q. Were you denied the right to file them by the Board? A. I was.

Q. Now then, at that time did you believe that you could not file them with the Board? A. At that time, after I was told—

Q. Now, in 1942 is what I am talking about now. After you were told the case was on appeal, did you believe you couldn't file them with the Local Board? A. That is right.

Q. And did you believe that the Board knew what they were doing when they told you you couldn't file them?

A. I did.

Q. Now, when was the next time that you heard from your Local Board or the Selective Service System?

A. February 22, 1944.

Q. And at that time where were you? A. I was associated as a missionary evangelist, full-time minister of the gospel, at Uniontown, Pennsylvania.

Q. And you were acting there the same as you had been in years before? A. I was acting as a minister, preach-

ing the gospel of the kingdom from house to house.

Q. Under the direction of whom? A. I was still under the direction of the Watch Tower Bible and Tract Society, of New York, and working in cooperation with the local company of Jehovah's witnesses at Uniontown.

Q. Now, when you got this notice or communication from the Local Board, what was it about?

A. It was a conscientious objector's form.

Q. That was in 1944? A. February 22, 1944.

Q. And what did you do when you got that form from the Local Board? A. I prepared a statement saying that as far as I knew my case was being appealed, it was still before the Appeal Board, and that at that present time I didn't wish to put anything further in my file. I believed that it was impossible to file it.

Q. Why did you say that you did not desire to put anything further in your file? A. Because I believed that it was impossible for me to add anything further to my file.

Q. Why? A. I had been told by Mr. McNutt, of the Local Board, that my case had gone upon appeal at the time that I tried to file the affidavits.

Q. Back in 1942? A. Back in 1942.

Q. When was the next time you heard anything from the Local Board or did anything about the Local Board in connection with your case? A. In April—I don't remember the exact date—I received a notice to report for pre-induction physical examination.

A. And what did you do? A. I reported and went through the pre-induction physical examination, as directed, and then I looked through my file, because I thought that my case was progressing without having been heard from the Appeal Board. I wanted to make sure that my file had been returned and I had not been notified of it.

Q. Of the decision of the Appeal Board?

A. That is right.

Q. When you looked in the file, did you find an Appeal Board decision anywhere? A. No, there was no Appeal

Board decision; in fact, part of my file was missing.

Q. Now, when you found part of your file was missing, what did you do? A. I noted the part that was missing, and I prepared a letter to the Local Board stating that I had gone over my file and found part of it missing, and that I reasoned from that that my case had never gone before the Appeal Board—in fact, they told me at the time that my file was lost—and therefore I submitted the evidence missing, and also some additional evidence setting forth my claim for ministerial classification.

Q. I show you now Defendant's Exhibit "A", part of the documents which have already been identified by you, to which is attached an affidavit dated May 16, 1944, signed by Charles H. Stewart; and an affidavit signed by Oliver G. Cuppett, dated May 16, 1944; an affidavit signed by R. L. Murray dated May 20, 1944; an affidavit signed by Earl V. Singer, dated May 16, 1944; an affidavit of Virginia K. Welsh, dated May 16, 1944; an affidavit of Harry M. Fahl, dated May 19, 1944; an affidavit of H. M. Stroh, dated May 19, 1944; an affidavit of Claude O. Dawson, dated May 16, 1944; and a petition signed by fourteen persons attached to your own affidavit dated October 17, 1944; and then to that is attached copy of a letter from the Selective Service System dated October 22, 1942, your letter dated October 27, 1942, to the Selective Service Board, Canonsburg; your letter dated October 10, 1942, to the Selective Service Local Board at Canonsburg; a certificate of ordination dated December 24, 1941; and a statement attached to a letter dated May 23, 1944, addressed to the Selective Service Board No. 4, and ask you what you did with those documents—when you got these affidavits just mentioned and what you did with the other documents mentioned after you had obtained those affidavits. A. I filed these all with the Local Board, by registered mail.

Q. Now, you mailed them by registered mail?

A. I did.

Q. And did you get a return receipt that they had been

filed? A. I did.

Q. And why did you mail all this evidence to the Local Board? A. Because I believed that the other evidence had been lost, and I wished them to reconsider my case and give me a classification as a minister, and that, failing in this, it would go to the Appeal Board, where it would be reviewed by the Appeal Board.

Q. And did you so request? A. I so requested in the statement.

Q. Now, after you had received the return receipt, what was the next thing that you heard from your local Board?

A. The next thing I heard from the Local Board was a classification of 1-A, through the Local Board, from the Appeal Board, dated August 28, 1944.

Q. And what did you do when you got that?

A. I don't understand the question.

Q. Well, what steps did you take after that to notify the Selective Service officials? A. I appealed to the State Director and also National Headquarters, and I also contacted you in my behalf to take my case to the President of the United States, if that was possible.

Q. Now, after those moves were taken, were you ordered —continued to be ordered to report for induction?

A. I was. I received a notice to report for induction on September 11, 1944.

Q. Now, did you know that these affidavits that you had mailed to the Local Board had not been included in your file? A. No, I did not.

Q. When did you learn that those affidavits had not been included in your file or considered by the Board of Appeal? A. Today.

Q. Now, after you got your notice to report for induction, and the State and National Headquarters had declined to review your case on appeal, what did you do?

A. I reported for induction September 11th, 1944, as directed.

Q. Now, tell us what you did on that day, step by step.

A. I reported to the Local Board of Canonsburg, Pennsylvania, at the State Armory at seven o'clock A.M. Mr. McNutt was the only person present beside myself; and he said, "I suppose you have reported to get your papers and a ticket." I told him that that was the reason. He handed me a sealed envelope and a ticket one way to Pittsburgh, and directed me to report to the Old Postoffice Building induction center. I complied with the directions, and I arrived at the induction center at about nine A.M. the same day, September 11th.

Q. And just tell us what happened, whom you saw, what they said to you and what you said to them, and what you did, on September 11th.

A. On arriving at the induction center, I asked information as to what steps I should take, and I was directed to the assembly hall. I submitted the sealed envelope to the officer in charge, was told to sit with the group until my name was called. My name was called, and the group that I was with went to a room where a number of stenographers were engaged and they asked various questions, such as my name and address and my father and mother's name, and then a stenographer asked my occupation. I told her that I was a full-time ordained minister of the gospel; and she asked me what church I preached in; I told her that I didn't preach in any church and wait for the congregation to assemble before me, but I preached according to the example that Christ Jesus set, by going from house to house and taking the message of the gospel kingdom to the people, and answering Bible questions and holding Bible studies with them. And she asked me what church or what denomination I belonged to; I told her that I was a full-time minister under the direction of the Watch Tower Bible and Tract Society and that I was one of Jehovah's witnesses and a missionary evangelist. She stated that she believed —that she thought that Jehovah's witnesses wouldn't report for induction and that also they were against—or rather, wouldn't obey any of the draft laws, which I told her

that Jehovah's witnesses were in accord with all the laws of the land that were consistent with God's law, as set forth in the Bible, but I stated it was impossible for them to carry out or to take on any obligation other than their commission to preach the gospel of the kingdom, as they had been commissioned by Almighty God. After this she finished typing up the forms that I handed her; and then we went to another room to report for various physical tests.

Q. Then what happened?

A. I had many, various tests; I was asked certain questions by a doctor, I believe a mental examiner; and he asked me if there were any mental cases in the family, if there were any severe diseases, and he also asked me my occupation. I told him I was an ordained minister of the gospel under the direction of the Watch Tower Bible and Tract Society. He told me I should be able to secure a commission, or would get a commission in the Navy, as they were needing chaplains there. I told him it was not the policy of the Watch Tower Bible and Tract Society to assign their full-time ministers to any branch of the armed services, and I told him the reason, this: That Jehovah's witnesses were ambassadors of God's Theocratic Government, and as such ambassadors they must pursue a course of strictest neutrality, without having anything to do with any war affairs or government, also that they were soldiers in the army of Christ and it was impossible for them to serve in two armies at the same time. I told him that they were wearing the uniform of Christ and using the weapons that Christ Jesus had prescribed for them, that of the sword of the spirit, which is the Word of God. And after this examination before the mental doctor I was given various forms to fill out, such as dependency forms, whether or not I was married; and I was also fingerprinted and filled out forms with regard to the fingerprinting; and then I was given, among other things, a choice of what branch of the Navy I should care to go into, and I told the officer in charge there that I had no choice. And, of course, he asked why; I replied that I was

an ordained minister of the gospel and my time was employed in preaching the gospel of the kingdom from house to house and by presenting the people with Bible literature which explained God's purpose to establish a kingdom here on the earth. I further stated it was impossible for me to make a choice, because my full time and energy were devoted to the interests of the kingdom and in the proclamation of the kingdom's message, that the peoples of earth might learn of God's provision for them to gain everlasting life in his kingdom here on earth. He asked me if I would take any active duty. I told him I could not, for the reasons I have mentioned. He said that is all he wanted to know, he just didn't want to assign me to a ship where there were men who were employed in active duty and were willing to perform their services. After that I was informed it would be necessary for me to return the next day in order to complete the pre-induction regulations, the examinations. And I took advantage of this opportunity to present this letter of explanation which I had filed with Mr. Keckler and—

Q. Tell us what happened when you went there—Have you told us all that happened on the 11th? A. No. I asked that they consider this letter of explanation of my position as a minister, and I handed it to one of the officers at the desk, and he handed it to another officer, and then they returned it to me and said that thewe was nothing that they could do that day, I would have to return the next day.

Q. Now, when you were talking about "this letter", you are referring to the one that Commander Keckler read from the witness stand here today, are you not?

A. That is correct.

Q. All right. Go ahead and tell us what happened.

A. I left the Old Postoffice Building at about 2:30, having been instructed to call back at the last desk that I had been interviewed the next morning at nine o'clock; and I reported, as directed, on the morning of September 12th, arriving at the induction center at approximately nine o'clock. And I went to the fifth floor to get the file of papers

which I had left there the previous evening. Then I was directed to go to the Naval recruiting office, on the first floor of that building; and after complying with directions, I was asked questions by a man at the desk, and instructed by him to go to a kind of mezzanine or balcony floor to receive certain papers to fill out. And when I reported there, as directed, I was given forms, the ones which were mentioned here today. One was a paper—I call it a dependency form, stating that I was receiving no money from the Government for any previous service in the armed forces, and I filled this paper out. Then there was a large green form with a check mark, or my signature should be placed right at the check mark; and this contained an oath that I had agreed to support the United States Government in time of war and that I was submissive to the command of the President of the United States, as commander in chief of the army, or words to that effect. I called the officer over, the one that had given me the forms, and I told him I couldn't sign that oath. He asked me why. I stated that I was an ordained minister of the gospel and that my occupation was that of preaching the gospel of the kingdom, and that I was merely complying with the Selective Service regulations by appearing there that morning and filling out the various forms and going through the various forms of procedure of induction. He said, "I don't see why they sent you down here in the first place; I don't care if you don't fill out the forms." I told him it was not I that was breaking the law, but rather the Draft Board, who had failed to consider the evidence of my position as a minister, and that therefore they would require me to perform an act which would cause a breach of covenant with my Creator and that would bring about my everlasting destruction. I told the officer that since this Draft Board—or no earthly power, including the Draft Board—had no authority to grant any kind of a pardon from this execution of punishment that would pass upon me by Almighty God if I would break my covenant, then they had no reason, they had no

authority to force me to perform an act which would cause me to break my covenant. He told me I would just have to go down to the desk and report to the man there and tell him I refused to sign the oath.

Q. Then what did you do? A. I complied with his order, and I went to the officer—I believe Commander Keckler said his name was Tissue—and I told him that I had refused to sign the oath, and I told him the reason why, that I was a minister of the gospel. And I took advantage of this opportunity then and again produced the letter of explanation and filed it with him, and I asked him to look it over. He told me that the easiest thing for me to do would be to just go ahead and be inducted into the Army, that I have to take whatever course I wanted to after that. But I explained to him that I wasn't looking for the easiest course, that when I took my obligation to preach as a minister that I realized from the admonition that Jesus Christ Himself gave, that I would be hated of all nations and above all creatures for the stand that I have taken, and that I would be persecuted, mistreated, imprisoned, and perhaps even killed, for maintaining my integrity as a Christian and a minister. He told me I would just have to wait and directed me to be seated. And I waited there for a time, and Mr. Keckler came over to the desk, and I believe he picked up the letter of explanation, and then he and Mr. Tissue and myself went to the office of Mr. Keckler; and when I entered the room Mr. Keckler was sitting at his desk and had the letter of explanation in his hand. He asked me what this was all about; and, referring to the letter of explanation, I told him that that was an explanation of my position as a minister, and that as a minister I was commissioned to preach, and that I already had an obligation as a soldier in the army of Christ. He asked me then if I would sign a statement saying that I would—I forget the exact words that he used; I agree with the words that he said, that he stated here this morning—that I should make some statement that I had refused to comply with all the regulations.

I told him this evidence I had submitted in the form of a letter of explanation was complete, that it set forth my standing as a minister, and that I filed this in order that there might be a written record of my purpose in appearing there that day. Then Mr. Keckler also asked me why I didn't go into the Navy as a chaplain; I told him that my means of preaching was the same as that of Christ Jesus, that He preached from house to house, and that by going into the Navy as a chaplain my commission to preach would be so regulated by the regulations of the armed forces that it would make my commission to preach null and void, would cause me to break my covenant with my Creator, which of course would result in my everlasting destruction. I told him it would be impossible for me to pursue that course. He then asked me again if I would sign a statement. I told him that I would not. And then he told me, if he didn't have his uniform on he would take me over in the corner and give me a good "going over", and then he assured me—he said, "Don't you think I can't do it either". I told him I didn't doubt perhaps he could, but I also stated —I asked him what he thought I would be doing in the meantime, assured him I would be fighting back, and told him—or rather, he said after I said I would be fighting back that that didn't sound much like a minister, but I told him it was a minister's right and obligation to defend himself if he was molested or if his liberty to preach was put in any danger. I told him that that was scriptural admonition and that the prophet Nehemiah at the times the walls of Jerusalem were being rebuilded, when there was a threat of violence that he commanded his builders that they should fight in defense of their lives and of their kinsmen and of their brethren.

Q. And then what? A. And then Mr. Keckler—I believe he again asked me if I would sign a statement, he asked me several times if I would sign this statement, in fact insisted on it, and I refused. So he called the Draft Board and asked if they had a registrant there by the

name of William Murray Estep; and, getting this information, he called Mr. Uhl and asked—I heard him ask Mr. Uhl what steps he would take in my regard, what action he should take; and after he hung up, completed his telephone conversation, he told me that I either had the choice of making and signing that statement and then I could go home and wait to be picked up by the F.B.I., or else I could refuse to sign the statement and be shipped out of there that night. I told him whatever disposition he desired to make was all right by me, my letter of explanation was complete and, as my letter stated, I reported there merely to comply with the Selective Service Regulations, to carry out the—to exhaust my administrative remedies, I believe is the legal term for it. And I then asked him if I might be again returned to the group and have the opportunity to be sworn in, and he said, "Well, if it is the oath you want administered, we can do that right here." So, Mr. Tissue acted as witness, Mr. Keckler was standing behind his desk with the book of regulations out of which he read, and I was standing before the desk; and then he read a part of the regulations which said, "When your name is called you will take one step forward in acknowledgment of your acceptance into the armed forces", and then he called my name again, and I said, "I refuse to step forward". And then he said "All right", and he turned to his assistant and asked his assistant to go out and bring in several witnesses, that they might testify to the fact that I had refused to sign any statement and that I had refused to step forward at the command. Then the assistant left the room, and Mr. Keckler and I were the only ones present. And I said, "Mr. Keckler, if you would give me just a few minutes I could explain my position as a minister and also as a Christian, and my obligation to perform my ministerial activity." And he said, "All right". So I began—I told him that Jehovah's witnesses were engaged in a preaching work of greatest national importance, because they were telling the people of a kingdom which Jehovah the Almighty God purposed to establish

here on the earth, and that such kingdom would last forever. I told him that this kingdom was a theocratic government that would be ruled directly by Jehovah the Almighty God through His Son, Christ Jesus, and that the visible representatives thereof would be the men of old, the faithful prophets of the Hebrew scriptures, which would be resurrected into life here on the earth, and that these would carry out the commandments of the Almighty God as were given to them, and they in turn would submit them to the people as their commands from their Creator. I told them before this was possible, though, that the present kingdoms of the earth must be done away with, their governments—none excepted—must pass out of the picture, because they were all in bondage under the overlordship of the greatest dictator of all times, Satan the Devil; and before this Theocratic government could be completely established it was necessary that these governments be done away with. This would be performed by the battle of Armageddon, which would destroy all flesh that was not in favor—found favor in the sight of Almighty God. Then I further stated that before this battle began it was necessary that the people be warned concerning this terrible time of destruction, and that this warning work Jehovah's witnesses were carrying on by their house to house visitation; and that also the people in being given this warning were also being given a message of comfort, that they would have an opportunity to become subjects under the everlasting government and have life and perfection, and that their loved ones from whom they had been parted by death would be resurrected again and that they would enjoy everlasting companionship. I started to state further, and the witnesses returned—Mr. Tissue and I believe two other Naval officers—and then I had to quit testifying then. And Mr. Keckler then asked these men to bear witness that I had refused to submit to —refused to step forward at the time that he called my name and also refused to sign any statement, and they did so. And then he told me I could go home and wait to be

picked up by the F.B.I., and then he told me to get out of his office.

Q. Do you recall seeing a statement like this, dated September 12, 1944, that is attached to Defendant's Exhibit "U", which is in evidence? That is a copy, but is that the one that they had there, that these witnesses signed there on that day? A. Yes.

Q. And that is a correct statement, of course, is it not? Did you read that? A. No, I didn't.

Q. Read it. A. Out loud?

A. No, just read it to yourself. A. I recognize the form, but at the time I don't believe—I may be mistaken; I don't know whether I read it over or not, but that is the one.

Q. That is signed by four men—Commander Keckler and Lieutenant Nichols, Savukas and Tissue. Those men were in there at that time. Is that right? A. Yes.

Q. All right. Did anything else happen? A. No. I left the induction center and returned home.

CROSS EXAMINATION

Mr. Mashank:

Q. You had quite a discussion down there at the induction station on September 11th and the 12th with the various people at the station. Is that right? A. I did.

Q. And I take it you had quite a session with Commander Keckler, too? A. That is correct.

Q. I presume you didn't convert him over into your ideas, did you? A. I did not.

Q. And Commander Keckler didn't abuse you in any way down at the station, did he? A. No; he was very polite.

Q. A gentleman all the way through? A. That is correct.

Q. And you refused to step forward so that he could administrate the oath to you? A. That is right.

Q. So you refused to submit to induction down at that induction station at that time? A. Yes, I did.

DEFENDANT RESTS

TESTIMONY CLOSED

Mr. Covington: At this time we have a motion to present to the Court.

The Court: You may come to side bar.

(At side bar counsel for defendant then presented a written motion to dismiss and written motion for directed verdict, as follows:)

Motion to Dismiss

Now comes the defendant at the close of the evidence and before the argument of counsel and moves the court for a dismissal of the indictment and each count thereof, for a discharge of the defendant and for a judgment of acquittal because:

1. The government has wholly failed to prove a case against the defendant under each count of the indictment.

2. There is no evidence to show that the defendant violated the Act as charged in each count of the indictment.

3. The overwhelming preponderance of the evidence and the undisputed evidence shows that the defendant is not guilty as charged in each count of the indictment.

4. The undisputed evidence shows that the defendant had completed the selective process and fully exhausted his administrative remedies under the Act so as to refuse to submit to induction and to challenge the validity of the orders that he is charged with violating because the undisputed evidence shows that he is exempt from all training and service because a minister of religion under the Act and Regulations and that the administrative agency vio-

lated the Act, the Regulations and the constitutional rights of the defendant.

5. The undisputed evidence shows that the orders of the administrative agency and of the armed forces were contrary to the undisputed evidence, contrary to the overwhelming preponderance of the evidence, without support of substantial evidence, in excess of the statutory authority of the agency, without jurisdiction, contrary to law, contrary to the Regulations, contrary to the Act, arbitrary and capricious and in violation of the due process clause of the Fifth Amendment to the United States Constitution.

6. There is no evidence showing that the defendant is not a minister of religion as claimed, no evidence that he fictitiously claimed to be a minister, no evidence showing that he was not exempt as a minister, and the undisputed evidence before the board showed that he was a minister of religion duly and regularly performing his duties as such at all times herein and that he was exempt as such under the Act and the Regulations. Moreover the evidence shows that the boards denied his claim for exemption upon a fictitious, arbitrary and capricious ground, which was whether the defendant's name appeared on a certified official list of ministers filed with National Headquarters of the Selective Service System. Furthermore the boards did not follow the Opinion No. 14 of the National Headquarters of the Selective Service System in classifying the defendant. By reason thereof the orders of the board are void, illegal and contrary to law and the orders of the armed forces which defendant is charged with violating is without legal force and effect.

7. The orders upon which the indictment is based are void because the administrative agency denied the defendant a fair and full hearing, did not consider evidence, ignored all evidence showing defendant was exempt, refused to consider evidence showing defendant was exempt, and violated all of the defendant's procedural rights to a hear-

ing and his right to present evidence, all of which action denied the defendant his rights of due process and liberty contrary to the Fifth Amendment to the United States Constitution.

8. The construction placed upon the Act and Regulations by the court requiring the defendant to submit to induction and apply for a writ of habeas corpus as the only remedy and means of challenging the invalidity of the orders on which the indictment is based deprives the defendant of his constitutional rights. Moreover, the court's denial of defendant's efforts to prove in defense to the indictment that the action of the administrative agency is void because he is exempt as a minister of religion denied the defendant his rights to a full trial of his defenses under the law in violation of the due process clause of the Fifth Amendment, denied him his right to a judicial trial and judicial inquiry as to the administrative action contrary to the Third Article of the United States Constitution, and thereby the Act and Regulations have been converted into a Bill of Attainder contrary to clause 3, Section 9 of Article I of the United States Constitution.

9. The criminal sanctions clause of section 11 of the Act and the Regulations promulgated thereunder have been construed by the court and applied to the facts in this case so as to penalize the defendant for claiming his rights and refusing to submit to a void order and thereby the Act and Regulations have been converted into a Bill of Attainder contrary to clause 3 in Section 9 of Article I of the United States Constitution, transfer and surrender the judicial power of the United States Courts to the administrative agency contrary to Article III of the Constitution, abridge and deny the defendant his right to prove his innocence contrary to the Fifth Amendment to the Constitution, they permit the conviction without evidence and upon hearsay evidence and deny the defendant the right to counsel because he is not allowed counsel before the board which is

the exclusive agency for determining guilt of the defendant under the Act all contrary to the Fifth and Sixth Amendments to the United States Constitution.

WHEREFORE the defendant prays that upon a consideration hereof the court render an order dismissing the indictment and enter a judgment acquitting the defendant under each count of the indictment and order the defendant discharged.

Motion for Directed Verdict

Now comes the defendant at the close of all the evidence when both parties have announced that they rest their respective cases and before the court charges the jury, and requests the court to grant a directed verdict and instruct the jury to return a verdict of not guilty, and discharge the defendant for each of the following reasons:

1. Acceptance by the armed forces upon the preinduction physical examination and the subsequent appearance of the defendant at the local board and induction station pursuant to the order, where he declined to submit to induction, completes the administrative process so as to permit judicial review of the illegal classification in defense to the indictment, based on his failure to submit to induction, and therefore the defendant is entitled to have the court consider the following defenses, that the classification and order on which the indictment was based were void.

2. It is not necessary for defendant voluntarily to submit to induction and become a member of the armed forces as an inductee in compliance with the order because such is to require the defendant to perform a vain, idle and immaterial act as a condition precedent to judicial review of the illegal classification.

3. The undisputed evidence before the board and before this court establishes that the defendant was exempt from all training and service under the Act because a duly ordained minister of religion under Section 5 (d) of the Act and

Section 622.44 of the Regulations promulgated thereunder, and there was no substantial evidence that he was not exempt under the terms of the Act and Regulations; therefore the final classification and the orders based thereon were without authority of law, in excess of the jurisdiction of the draft boards and of the military authorities, arbitrary and capricious, without support of substantial evidence, contrary to law, contrary to the Act and Regulations, contrary to the Constitution by depriving petitioner of his rights and liberty without due process of law.

4. The undisputed evidence before the board and this court establishes that the defendant is a minister of religion, exempt from all duty of training and service under the Act and Regulations and that the board violated the due process clause and denied defendant his rights and liberty without due process of law, contrary to the Fifth Amendment to the United States Constitution.

5. The undisputed evidence before the board and this court establishes that the defendant is a minister of religion, exempt from all duty of training and service under the Act and Regulations and that the board violated the due process clause of the Fifth Amendment by denying the defendant a full and fair hearing, without giving the defendant the type of hearing that is contemplated by law and by not considering but ignoring and rejecting the undisputed evidence which he offered to the board showing that he was exempt from all training and service under the Act.

6. The various orders upon which the indictment was based are illegal, void, in excess of authority, arbitrary and capricious, and contrary to the Act and Regulations; and therefore the undisputed evidence shows that the defendant is not guilty of violating any duty under the Act and Regulations.

7. The undisputed evidence shows that the defendant is not guilty, because the evidence shows that the defendant

had no duty of training and service under the Act and that he was not a delinquent within the meaning of the terms of the Regulations.

8. The undisputed evidence shows that the defendant honestly and in good faith believed that he was exempt as a minister of religion and that he honestly and in good faith complied with all the law, Regulations, orders and commands of the board and the military authorities and went to the very end of the administrative process, and his refusal to submit to induction was not a willful, unlawful and knowing violation of the Act, because he was entitled to take such steps and subsequently refuse to submit to induction for the purpose of exhausting his administrative remedies under the Act and Regulations.

9. The Act and Regulations have been construed so as to constitute a Bill of Attainder contrary to Clause 3, Section 9 of Article I of the United States Constitution because they require an exempt registrant to submit to induction as a condition precedent to judicial review and penalize the exempt registrant who fails to submit to induction by denying him the right to test the illegality of the administrative classification purporting to fix his duty under the Act and Regulations.

10. Construction of the Act and Regulations so as to require a selectee to submit to induction after the process of selection has been completed, as a condition precedent to obtaining judicial review, denies defendant his liberty without due process of law, contrary to the Fifth and Sixth Amendments to the United States Constitution.

11. Construction of the Act and Regulations so as to require a selectee to submit to induction after the process of selection has been completed denies the defendant a judicial trial and the right to a judicial review of administrative action and authority to act, contrary to the Third Article of the United States Constitution.

WHEREFORE defendant prays that upon considera-

tion hereof the court instruct the jury to find defendant not guilty, render and enter a judgment of acquittal, order the indictment dismissed, and direct that the defendant be discharged. The defendant prays for such other and further relief to which he may show himself to be justly entitled.

ADDITIONAL GROUND FOR THE MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR DIRECTED VERDICT

The undisputed evidence shows that the Local Board violated the procedural rights of the defendant by communicating false and misleading statements to the Board of Appeal, which prejudiced and injured the defendant's case before the Appeal Board, by informing the Appeal Board that defendant only performed his ministerial duties three days per week. This statement was false, contrary to the facts, and misleading. It was based upon examination of the defendant at the time he appeared before the Local Board as to his activities for the week immediately preceding. Moreover, that examination did not show, nor does the file show, that the defendant only devoted three days each week to his ministry. On the contrary, the undisputed evidence shows that he devoted on the average of 150 hours per month to the performance of his ministerial duties in addition to his time spent in preparation for the work that he was doing as a minister. Such false and misleading statements deprived the defendant of his rights and liberty, contrary to the Regulations, the Act, and the due process clause of the Fifth Amendment to the United States Constitution.

Moreover, the Local Board violated the procedural rights of the defendant, to his prejudice, by expressing their opinions of and concerning the status of the defendant as a minister. The Regulations require that the Draft Board shall not express its opinions in writing to the Appeal Board in transmitting the papers to the Appeal Board

or in reference to the case to be decided by the Appeal Board.

Furthermore, the Draft Board violated the procedural rights of the defendant, contrary to the Act and Regulations, and the due process clause of the Fifth Amendment, by informing the Board of Appeals that the defendant was given a I-A classification because his name did not appear on the official certified list.

Mr. Covington: Now, Your Honor, as part of this last named ground, I want to add something orally, and that is: That the undisputed evidence shows that the Local Board violated the procedural rights of the defendant by wilfully and unlawfully withholding from the Appeal Board certain evidence that was submitted in May, 1944, which the Board had previously refused to consider in 1942, plus additional evidence gathered in 1944, that showed that the defendant was a minister exempt from all training and service; that the Local Board unlawfully refused to file this in his file while the file was yet in their possession and before it was forwarded to the Board of Appeal. Therefore the Board deliberately and unlawfully violated the Selective Service Regulations, which specifically require that anything filed by the registrant before the file is forwarded to the Board of Appeal shall be placed in the file; that they unlawfully denied the Board of Appeal the right to consider this evidence, which related to his ministerial status, and thereby the rights of the defendant were violated, in violation of and contrary to the due process clause of the Fifth Amendment of the United States Constitution.

That is the entire motion.

The Court: The motion of the defendant in this case for a directed verdict and also the motion of the defendant to dismiss this action are both denied.

Mr. Covington: We take exception.

The Court: Exception will be noted.

Mr. Covington: Now, I would like to call Your Honor's attention to the requested instructions which I submitted to the Court during the taking of the evidence, and would like to have the Court consider those, so that if, as and when the Court charges the jury he may pass upon those requested instructions.

(Note: Informal discussion between Court and counsel, off the record).

The Court: You have to confine your address to the jury to the issue in the pleadings; you cannot argue to them the questions which you have raised before the Court as to which we have overruled your propositions.

Mr. Covington: I take the view it is a question whether or not this man wilfully violated the law, since the Supreme Court said he could report there as a matter of exhausting his remedies. There is a matter of unlawful intent in this matter, and that is for the jury to consider. And it can consider the facts placed before them which have to do with his good faith and honest belief that he had a right to go there and exhaust his remedies. And I except to the Court having limited my argument to not discuss the ministerial status. And outside of that limitation to which I have taken exception, I now direct Your Honor's attention to the fact that the jury should be entitled to inquire into, and I should be entitled to argue, whether or not this man unlawfully and feloniously had an intent to violate this law when he went there to the induction center. That is a matter for the jury to decide, as was determined in the case of *United States v. Murdock*, which is an Internal Revenue case, reported in 295 U. S. And I should think it would be more or less rath-

er like depriving a lawyer of his right to represent his client if he was not given some liberty in arguing to the jury. I am not going to argue that the Draft Board erred, or anything along that line; but nevertheless I shall be persuaded and compelled to argue upon the evidence that the Court has permitted to go to the jury, and there has been a great deal of that, many documents have been introduced—

The Court: You have a perfect right, if you confine your argument to the questions presented by the evidence.

Mr. Covington: Therefore I shall have to request of the Court to allow me more than the time suggested by Mr. Mashank, of only five minutes.

Mr. Mashank: I don't mean to limit you to five minutes. I think in five minutes you could go over the grounds in this case. You can take all day tomorrow, if you want to.

Mr. Covington: Well, I don't desire to do that; all I desire to do, is protect this man's rights and put up a manly argument, as the evidence will best allow.

The Court: As long as you confine your argument to the issue revealed by the evidence in this case there will be no restriction placed upon you.

Mr. Covington: That is all I expect to do, Your Honor.

The Court: If you want a half-hour to present your case, go ahead.

Mr. Covington: I shall not take more than that.

The Court: All right.

(Adjourned until Friday, December 8, 1944, at 10:00 o'clock A.M.)

Defendant's Requested Instructions

DEFENDANT'S REQUESTED INSTRUCTION No. 1

All persons between the ages of 18 and 45 are subject to the Selective Training and Service Act of 1940 and are liable for training and service thereunder at such time and in such manner as the Selective Service System may prescribe for him unless he is exempt from all training and service by the Act itself. The only persons exempted by Congress from training and service are "regular or duly ordained ministers of religion, and students preparing for the ministry". (Sec. 5 (d)) If a registrant is a "regular or duly ordained minister of religion" within the meaning of the Act and Regulations at the time of his registration and classification, he has no duty to submit to training or render service under the Act and the local draft board has no authority to order him to do training and service under the Act. Unless you can find beyond a reasonable doubt that he had a duty and that he was not a minister of religion you cannot convict.

DEFENDANT'S REQUESTED INSTRUCTION No. 2

You are instructed that the failure of the defendant to comply with the order of the armed forces acting under the Selective Training and Service Act which requires that he submit to induction does not, standing alone, establish guilt on the part of the defendant. It is necessary that the jury find that the draft boards had authority to classify the defendant as liable for training and service, and if you fail to find that the draft boards did have such authority, then you cannot convict, although the defendant admit that he did not submit to induction as required by the order.

DEFENDANT'S REQUESTED INSTRUCTION No. 3

It will be observed that the Selective Training and Service Act of 1940 employs the terms "regular or duly ordained

ministers of religion". The Selective Service Regulations duly promulgated by the President of the United States through the Director of Selective Service in Section 622.44 (a) provide: "In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940)."

DEFENDANT'S REQUESTED INSTRUCTION No. 4

The defendant claims that he is a "duly ordained minister of religion" and so states in his Selective Service questionnaire filed with the local draft board. The Selective Service Regulations define a "duly ordained minister of religion" in section 622.44 (c) as follows: "A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties."

DEFENDANT'S REQUESTED INSTRUCTION No. 5

The defendant claims to be ordained. He says that the ceremony attendant to his ordination was by water immersion or baptism publicly. He says that upon his baptism after entering into a covenant to serve Almighty God Jehovah he thereby became ordained to preach "this gospel of the kingdom". He claims to be ordained by Jehovah God and, as his authority, relies upon the scriptures of Isaiah 61: 1, 2, which read: "The Spirit of the Lord GOD is upon me; because the LORD hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim

the acceptable year of the LORD, and the day of vengeance of our God; to comfort all that mourn." Defendant also claims that his ordination from Jehovah God is recognized by and certified by the earthly governing body of Jehovah's witnesses, the Watchtower Bible and Tract Society, Inc., which has issued to him credentials of ordination. This evidence is not impeached or contradicted by the government and it cannot be disregarded by you in arriving at your verdict. Neither the draft boards nor the jury can substitute their private opinion as to what constitutes ordination or who is an ordained minister, nor can the jury gauge and judge the wisdom and propriety of the ordination and mode of preaching employed by the orthodox clergy a means of determining whether or not the defendant is entitled to the exemption as a minister of religion provided for in Section 5 (d) of the Selective Training and Service Act.

DEFENDANT'S REQUESTED INSTRUCTION No. 6

You are instructed that, in passing upon the issue of defendant's ordination, "ordain" means "to establish by appointment" or "to appoint or establish". An ordained minister is one who has been duly appointed or recognized by a particular denomination or organization and who is devoting himself generally to the work of officiating and ministering in the interests and the affairs of such organization. In other words, it means an appointed minister. An ordination is not confined to any particular kind of ceremony or formalism. It cannot be required that the defendant show that he preforms functions normally performed by other regular ministers of orthodox religious organizations and that defendant is recognized by other of Jehovah's witnesses in the same manner in which the regular or duly ordained ministers of orthodox recognized religious sects and organizations are regarded. Among the various religious sects, churches and organizations the standards and

practices differ. What is normally required of a minister of one denomination is not required of a minister of another. What is considered salvation for one is considered damnation by the other. The policy or practice of orthodox recognized ecclesiastical organizations cannot be used as a rule to determine and measure the propriety or action of dissentient groups.

DEFENDANT'S REQUESTED INSTRUCTION No. 7

There is not, and cannot be, a fixed unalterable ceremony or definition for ordain, ordained or ordination. To limit or restrict ordination to some special form or ceremony employed by the orthodox religions would discriminate between the diversified modes and forms of ordination practiced by the various religious organizations. The law makes no discrimination in any respect between religious sects, cults, denominations, churches, or organizations and much less does not attempt to prescribe any form or mode of ordination for the ministers of any organization. Any and all persons who can prove to the satisfaction of the Court and jury that they have been duly appointed or recognized in the manner required by the regulations of their respective organization or denomination and are devoting themselves generally to the work of officiating and ministering in the interests and affairs of such religious organizations or bodies may be found to be ordained ministers. The methods employed by the orthodox, recognized religious sects cannot be employed as a guide in determining whether Jehovah's witnesses and the defendant are ordained ministers.

The words ordained and ordain mean "to establish by appointment, to appoint or establish". The important sense of the terms according to McClintock and Strong's "Cyclopedia of Biblical, Theological and Ecclesiastical Literature" is:

"the ceremony by which an individual is set apart to an order or office of the Christian ministry. . . . In a broader, and in fact its only important sense, . . . the appointment or designation of a person to a ministerial office, whether with or without attendant ceremonies. The term ordination is derived directly from the Latin *ordinatio*, signifying, with reference to things or affairs, a setting in order, an establishment, an edict, and with reference to men, an appointment to office. . . . A scriptural investigation of this subject can hardly fail to impress any ingenuous mind with the great significance of the fact that neither the Lord Jesus Christ nor any of his disciples gave specific commands or declaration in reference to ordination." (page 411)

DEFENDANT'S REQUESTED INSTRUCTION No. 8

It is not necessary to be an ordained minister of religion to be entitled to Class IV-D or to be exempt from training and service under the Selective Training and Service Act, but a person who regularly or customarily preaches and teaches the principles of religion of a recognized church, sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect or organization as a minister, is entitled to such IV-D classification and exemption, and Jehovah's witnesses are officially recognized by National Headquarters of Selective Service System as a religious sect or organization so that their regular ministers who are not ordained also are entitled to consideration as ministers of religion just as ministers of any church denomination, and that no discrimination is permitted either under the Act or Regulations.

DEFENDANT'S REQUESTED INSTRUCTION No. 9

In event you find that the defendant is not a "duly or-

dained minister of religion" you must next determine whether the defendant is a "regular minister of religion". The Director of Selective Service defines the term "regular minister of religion" in Section 622.44 (b) as follows:

> "A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister."

DEFENDANT'S REQUESTED INSTRUCTION No. 10

To be a regular minister of religion one need not be ordained, as you have been heretofore instructed. Section 5 (d) of the Selective Training and Service Act providing exemption for ministers of religion does not grant such exemption on the basis of some particular form, ceremony or practice. The Director of Selective Service in his "Second Report" to the President says:

> "The ordinary concept of 'preaching and teaching' is that it must be oral and from the pulpit or platform. Such is not the test. Preaching and teaching have neither locational nor vocal limitations. The method of transmission of knowledge does not determine its value or effect its purpose or goal. One may preach or teach from the pulpit, from the curbstone, in the fields, or at the residential fronts. He may shout his message 'from the housetops' or write it 'upon tablets of stone'. He may give his 'sermon on the mount', heal the eyes of the blind, write upon the sands while a Magdalene kneels, wash disciples' feet or die upon the Cross. He may carry his message with the gentleness of a Father Damien to the bedside of a leper, or hurl inkwells at

the devil with all the crusading vigor of a Luther. But if in saying the word or doing the thing which gives expression to the principle of religion, he conveys to those who 'have ears to hear' and 'eyes to see', the concept of those principles, he both preaches and teaches. He may walk the streets in daily converse with those about him telling them of those ideals that are the foundation of his religious conviction, or he may transmit his message on the written or printed page, but he is none the less the minister of religion if such method adopted by him has the effective means of inculcating in the minds and hearts of men the principles of religion, . . .

"The principle was extended to persons who were not, in any strict sense, ministers or priests in any sacerdotal sense. It included Christian Brothers, who are religious, who live in communities apart from the world and devote themselves exclusively to religious teaching; Lutheran lay teachers, who also dedicate themselves to teaching, including religion; *to the Jehovah's witnesses, who sell their religious books, and thus extend the Word.* It includes lay brothers in Catholic religious orders, and many other groups who dedicate their lives to the spread of their religion." (Underline [italic] added)—Selective Service in Wartime, Second Report to the President of the United States by the Director of Selective Service 1941-1942, pp. 239-241.

DEFENDANT'S REQUESTED INSTRUCTION No. 11

You are instructed that National Headquarters of Selective Service, Washington, D. C., acting through its Director, General Lewis B. Hershey, rendered an opinion regarding the action to be taken by draft boards with respect to Jehovah's witnesses, which opinion (amended November 2, 1942) reads as follows:

VOL. III OPINION No. 14 (Amended)
NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

SUBJECT: Ministerial Status of Jehovah's witnesses

FACTS:

Jehovah's witnesses claim exemption from training and service and classification in Class IV-D as duly ordained ministers of religion under section 5 (d), Selective Training and Service Act of 1940, as amended, and section 622.44, Selective Service Regulations, Second Edition, which read as follows:

Section 5 (d):

"Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

Section 622.44:

"Class IV-D: Minister of religion or divinity student. (a) In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

"(b) A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

"(c) A 'duly ordained minister of religion' is a man who has been ordained in accordance with the cere-

monial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties."

Question.—May Jehovah's witnesses be placed in Class IV-D as regular or duly ordained ministers of religion exempt from training and service?

Answer:

1. The Watchtower Bible and Tract Society, Inc., is incorporated under the laws of the State of New York for charitable, religious, and scientific purposes. The unincorporated body of persons known as Jehovah's witnesses hold in common certain religious tenets and beliefs and recognize as their terrestrial governing organization the Watchtower Bible and Tract Society, Inc. By their adherence to the organization of this religious corporation, the unincorporated body of Jehovah's witnesses are considered to constitute a recognized religious sect.

2. The unusual character of organization of Jehovah's witnesses renders comparisons with recognized churches and religious organizations difficult. Certain members of Jehovah's witnesses, by reason of the time which they devote, the dedication of their lives which they have made, the attitude of other Jehovah's witnesses toward them, and the record kept of them and their work, are in a position where they may be recognized as having a standing in relation to the organization and the other members of Jehovah's witnesses similar to that occupied by regular or duly ordained ministers of other religions.

3. Members of the Bethel Family are those members of Jehovah's witnesses who devote their full time and effort to the manufacture and production of books, pamphlets, and supplies for the religious benefit of

Jehovah's witnesses, the purpose of which is to present the beliefs of Jehovah's witnesses and to convert others. For their religious services, the members of this group receive their subsistence and lodging and in addition a very modest monthly allowance. This group of individuals consist of the office and factory workers at 117 Adams Street, Brooklyn, New York, and workers in the executive offices at 124 Columbia Heights, Brooklyn, New York, and at the Farms. Pioneers of Jehovah's witnesses are those members of Jehovah's witnesses who devote all or substantially all of their time to the work of teaching the tenets of their religion and in the converting of others to their belief. A certified official list of members of the Bethel Family and pioneers is being transmitted to the State Directors of Selective Service by National Headquarters of the Selective Service System simultaneously with the release of this amended Opinion. The members of the Bethel Family and pioneers whose names appear upon such certified official list come within the purview of section 5 (d) of the Selective Training and Service Act of 1940, as amended, and they may be classified in Class IV-D. The status of members of the Bethel Family and pioneers whose names do not appear upon such certified official list shall be determined under the provisions of paragraph 5 of this Opinion.

4. The original paragraph 4 has been consolidated with paragraph 3 of this amended Opinion.

5. The members of Jehovah's witnesses, known by the various names of members of the Bethel Family, pioneers, regional servants, zone servants, company servants, sound servants, advertising servants, and back-call servants, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's witnesses. The deference paid to these individuals by other members of Jehovah's

witnesses also varies in a great degree. It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote their lives in the furtherance of the beliefs of Jehovah's witnesses, whether or not they perform functions which are normally performed by regular or duly ordained ministers of other religions, and, finally, whether or not they are regarded by other Jehovah's witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.

6. In the case of Jehovah's witnesses, as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision.

(signed) Lewis B. Hershey
Director

LBH/spd
Legal
November 2, 1942
Secs. 5 (d), 622.44
DISTRIBUTION "A, B, C, D"

You shall consider and be guided by the foregoing opinion of the Selective Service System in addition to the other instructions given you herein, in determining whether or not the defendant had a duty under the Act and has unlawfully failed to perform such duty, if any you find.

DEFENDANT'S REQUESTED INSTRUCTION No. 12

The Selective Service Regulations make the local board, the appeal board, and President in proper turn, the sole classifying agencies. The "certified official list" of Jehovah's witnesses issued by Selective Service National Headquarters, mentioned in Opinion No. 14, was never more than advisory, and never exclusive, and the law required that the local board, the appeal board and the President, as the case might be, to consider the evidence presented by a registrant claiming to be a minister of religion, irrespective of whether or not his name was on the "certified official list", and to determine whether or not he was a minister upon the evidence in his "cover sheet" at the time of making the classification, and neither could find that he was not such minister, when he had claimed to be one, without evidence or reasonable evidence that he was not such minister, every person being presumed to speak the truth upon oath unless sufficient legal evidence exists to show that he has not done so.

You are instructed that Opinion No. 14 of the Director of Selective Service specifically requires that Jehovah's witnesses who devote their efforts in varying degrees shall be given consideration, and that the draft boards shall determine whether or not they are entitled to Class IV-D or minister of religion status, based upon "whether or not they devote their lives to the furtherance of the beliefs of Jehovah's witnesses, whether or not they perform functions normally performed by regular or duly ordained ministers of other religions, and, finally, whether or not they are regarded by other Jehovah's witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded." In classifying an unorthodox group the law also requires the draft boards to consider all the facts and not follow necessarily the criteria used in determining if one is a minister of orthodox religions.

DEFENDANT'S REQUESTED INSTRUCTION No. 13

Defendant's name was not on the certified official list mentioned in Opinion No. 14, issued by National Headquarters of Selective Service System, pertaining to Jehovah's witnesses, and defendant gives a valid reason for his name not being on such list.

The certified official list referred to in Opinion No. 14 does not control the classification of a registrant whose name does not appear thereon. The official list is no more than information from Selective Service National Headquarters that the individual whose name appears thereon comes within the purview of Section 5 (d) of the Selective Training and Service Act of 1940. It shows that National Headquarters is satisfied that the individual whose name appears on the official list has a standing on the same basis as the orthodox regular or duly ordained minister of other religions. The failure of defendant's name to appear on such list cannot be considered by you that he is not enlisted to exemption and classification of IV-D under Section 5 (d) of the Act and Section 622.44 of the Regulations.

If you, in fact, find that defendant was regularly engaged in the performance of such ministerial duties and as such is recognized by the Watchtower Bible and Tract Society, Inc., it will not be necessary that you consider whether or not his name appears on such official list accompanying Opinion No. 14 of National Headquarters.

The inclusion of defendant's name on said list would not *ipso facto*, that is, within itself, entitle him to classification as a minister of religion, nor could it be made a prerequisite to such classification. The presence of the name on such list is not made the conclusive and exclusive factor in determining whether or not one is a regular or duly ordained minister of religion under the Act.

DEFENDANT'S REQUESTED INSTRUCTION No. 14

You are instructed that the youthfulness of the defendant does not, within itself, affect his qualification as an ordained minister or a regular minister. The history of the preaching of Christ Jesus and His apostles and disciples shows that many of the most outstanding ministers were not of mature age. The Scriptures at 1 Timothy 4:12 indicate that Timothy was ordained to preach when but a small boy. There the apostle, Paul, says: "Let no man despise thy youth; but be thou an example of the believers."

DEFENDANT'S REQUESTED INSTRUCTION No. 15

You are instructed that draft boards and draft authorities are not above the law, but are required to be obedient to law in the performance of their duties, and are governed by the Selective Service Regulations and by the "interpretive regulations" commonly called "Opinions" of the Selective Service Director.

You are further instructed that the exemption allowed to ministers of religion by the Selective Training and Service Act is allowed to ALL ministers of religion and is made known by Congress and is binding upon all draft boards and authorities.

You are also instructed that the various sects and organizations have the right to set up and determine what the qualifications of their ministers shall be, and that where a person has duly qualified as such minister and regularly serves as such, and has furnished due proof thereof to the draft authorities, without specific substantial evidence that he is not such minister, they must find that he is such minister.

DEFENDANT'S REQUESTED INSTRUCTION No. 16

You are instructed that if you find or believe from the evidence adduced in this case that the defendant at the time of his classification showed that he was a minister of

religion and regularly served as such, and furnished his draft board due proof thereof, and that there was no substantial evidence in his file at the time of his final classification that he was not such minister, or that the board acted contrary to substantive law, or that the draft boards were prejudiced, or acted arbitrarily or capriciously in denying the defendant a more favorable classification than he received, then you should acquit the defendant and by your verdict say "not guilty".

DEFENDANT'S REQUESTED INSTRUCTION No. 17

You are instructed that a minister of religion is exempt from duty of training and service under the Selective Training and Service Act of 1940. If you find that the papers filed by the defendant with the draft boards showed that defendant was at the time of his final classification and the order in question regularly acting as a minister of Jehovah's witnesses, recognized by them and by the Watchtower Bible and Tract Society, Inc., of Brooklyn, New York, and there was no substantial or other evidence before the draft boards to show that he was not regularly acting in such ministerial capacity, or that the board failed to consider defendant's evidence, then, in such event, the draft boards had no authority or jurisdiction to order the defendant to report for training and service and defendant would not be under any duty to submit to induction; and accordingly, if you so find or have a reasonable doubt thereof you will acquit the defendant and by your verdict say "not guilty".

DEFENDANT'S REQUESTED INSTRUCTION No. 18

You are instructed that if there was substantial evidence before the draft board which made the final classification, that the defendant was one of Jehovah's witnesses' ministers, and there was no substantial evidence in the defendant's file at the board that he was not such minister,

then you may find that the draft board acted arbitrarily and capriciously when it denied him exemption and classification of IV-D, and in this event you should acquit the defendant and by your verdict say "not guilty".

By substantial evidence is meant a large quantum of evidence. It does not mean an absence of evidence and it means more than a mere scintilla or some evidence. It means that there must be enough evidence before the boards so that a reasonable man in the same circumstances as presented in this case would come to the same conclusion as the boards did.

You are further instructed that the meaning of "arbitrary" and "capricious" is "without any reasonable cause; without cause based upon law; without reason given; in disregard of evidence. It is comparable to, without justification or excuse; with no substantial evidence to support it; a conclusion contrary to substantial, competent evidence." (*In re Rogers*, 47 F. Supp. 265)

If you find and believe from the evidence that the said order to report for induction was based on arbitrary classification or action, you will acquit the defendant and by your verdict say "not guilty".

DEFENDANT'S REQUESTED INSTRUCTION No. 19

In determining whether or not the defendant is a regular or duly ordained minister of religion, if there is no evidence impeaching the defendant's claim and if the registrant's file at the local board does not contain evidence to prove that the defendant was fictitiously claiming to be a minister and was not in fact a minister of Jehovah's witnesses, then you are instructed that the draft boards had no discretion or authority to say that defendant was not entitled to exemption provided by section 5 (d) of the Selective Training and Service Act and to classification as a minister of religion, class IV-D.

DEFENDANT'S REQUESTED INSTRUCTION No. 20

You are instructed that while the draft boards may pass upon factual questions, they may not arbitrarily or capriciously substitute any other standard than the law and regulation, or disregard the explicit intent of the regulations, and that neither zeal nor personal disagreement with the effect produced by impartial enforcement of the regulations should be allowed to influence the conclusions arrived at in classifying any person under the provisions of the Selective Training and Service Act and the Regulations issued thereunder. The local boards must hold a fair and impartial hearing with regard to each registrant and the decision of the draft boards must be based solely upon the evidence before them, and the basis of the local board's decisions must be placed in the file at the time of the classification in order that the registrant may refute the same at his personal appearance and before taking an appeal. The draft boards cannot base their decisions upon speculation rather than evidence.

DEFENDANT'S REQUESTED INSTRUCTION No. 21

You are instructed that the law requires the local board to set out in writing and place in the defendant's file at the time of classification a record of all the facts and evidence considered by it in arriving at its determination. Section 623.2 of the Selective Service Regulations provides:

> "Information considered for classification. The registrant's classification shall be made solely on the basis of the Selective Service Questionnaire (Form 40), Affidavit of Dependent Over 18 Years of Age (Form 40A), Affidavit—Occupational Classification (General) (Form 42), or Affidavit—Occupational Classification (Industrial) (Form 42A), and such other written information as may be contained in his file; provided, however, when a registrant has failed or hereafter

fails to return his Selective Service Questionnaire (Form 40) within the time allowed by section 621.2 or when he has failed or hereafter fails to provide the local board with any other information concerning his status which he is requested or required to furnish, the local board shall proceed with his classification without such information. Oral information should not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances should the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file."

Particularly in reference to the classification of all of Jehovah's witnesses, the Director of Selective Service has stated in his Opinion No. 14 (as amended Nov. 2, 1942):

> "In the case of Jehovah's witnesses, as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision." (Paragraph 6)

If you find and believe from the evidence that the only documents considered by the draft boards were the Selective Service Questionnaire and the other written documents that have been introduced before you which were taken from the local board's file of the defendant, and you find that there was no other written evidence in his file which disputed his claim and which proved that he was falsifying and fictitiously claiming to be a minister, then you are instructed that the draft boards had no authority or jurisdiction to order the defendant to report; and if you

find such facts or have a reasonable doubt thereof, you will acquit the defendant and by your verdict say "not guilty".

DEFENDANT'S REQUESTED INSTRUCTION No. 22

In determining whether or not there was any written evidence before the draft boards that the defendant was a minister of religion, you cannot and will not consider the opinions and statements in letters or communications between the various officers of the Selective Service System. By evidence is meant affidavits, statements of witnesses, or written memoranda of information or testimony actually provided the local board. The opinions expressed by members of the Selective Service System in passing upon defendant's classification cannot be considered as evidence in arriving at your verdict. If there are any such expressions of opinion in the evidence, you are to disregard them entirely because the Selective Service Regulations (section 627.13 (a)) provide:

> "Immediately upon an appeal being taken to the board of appeal, the local board shall carefully check the registrant's file to make certain that all steps required by the regulations have been taken and the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts. In preparing such a summary the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision."

and Section 628.4 of the Regulations, in connection with the taking of an appeal to the President says:

> "The local board shall not place in the file any state-

ment or expression of opinion concerning the information in the registrant's file or the reasons for its decision."

And, particularly in reference to the classification of all of Jehovah's witnesses, the Director of Selective Service has stated in his Opinion No. 14 (as amended Nov. 2, 1942):

> "In the case of Jehovah's witnesses, as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision." (Paragraph 6)

DEFENDANT'S REQUESTED INSTRUCTION No. 23

You are instructed that the Selective Service Regulations provide for a registrant to have the benefit of a fair and impartial hearing before the local board. If from prejudice or for other reason the local board is disqualified, it is required to transfer the registrant to another local board for classification, and failing to do so is not cured by an appeal because the registrant is entitled to a full and fair hearing before an impartial local board before an appeal. The registrant is entitled to a fair decision by both the local and appeal boards.

If you believe from all the evidence in this case that any member of either the local or appeal board which undertook to classify the defendant, was so prejudiced that he could not fairly try the defendant, yet participated in classifying him, or that two or more acting members were disqualified from undertaking to classify him by reason of their prejudice, you should acquit the defendant and by your verdict say "not guilty".

You are further instructed that it was the responsibility of the draft boards to decide in the first instance in which

class the defendant should be placed and this should be accomplished so as to give equal and fair justice to all and such classification should be impartial and free from any political influence and in making such classification there should be no discrimination for or against defendant because of his race, creed or color; or because of his membership in any religious organization; and if you find from the evidence or have a reasonable doubt thereof that the draft boards discriminated, failed to give justice and were not impartial in making such classifications, you will acquit the defendant and by your verdict say "not guilty".

DEFENDANT'S REQUESTED INSTRUCTION No. 24

If you find or believe from the evidence that the local board denied defendant the right to make full proof before them orally or in writing or if you find or believe from the evidence that the local board did not give defendant a full and fair hearing in consideration of his case, or, that the local board acted unfairly, capriciously, or prejudicially, or refused or failed to consider evidence filed by defendant relative to his claim as a minister of religion, you will acquit the defendant and by your verdict say "not guilty".

DEFENDANT'S REQUESTED INSTRUCTION No. 25

You are instructed that the local board is not authorized to report a registrant to the United States Attorney for prosecution unless and until he is a delinquent. Sec. 601.5 (as amended November 1943) defines a delinquent as follows:

> "A 'delinquent' is a man liable for training and service under the provisions of the Selective Training and Service Act of 1940, as amended, who fails or neglects to perform any duty required of him under the provisions of the Selective Training and Service Act of 1940, as amended, and regulations made pursuant thereto."

If you find and believe from the evidence, or have a reasonable doubt thereof, that at the time that the local board issued the notice of delinquency the defendant was exempt, he was a minister of religion under no duty for training and service and would not be a delinquent; and if you so find, or have a resonable doubt thereof, you will acquit the defendant and by your verdict say "not guilty".

DEFENDANT'S REQUESTED INSTRUCTION No. 26

You are instructed that draft boards and anyone else have no right to concern themselves with the wisdom or expediency of exempting ministers of religion and ministerial students, as that has been determined by Congress. If a person is a "minister of religion" as defined by the Act and Regulations thereunder, and has furnished proof thereof to the draft boards, he is exempt and must be given his exemption since the law so provides.

DEFENDANT'S REQUESTED INSTRUCTION No. 27

The defendant is charged by indictment with unlawfully and knowingly refusing to submit to induction. In order to convict the defendant you must find beyond a reasonable doubt that he refused to submit to induction knowingly and with an unlawful intent to violate the law. There is evidence in this case tending to show that the defendant reported for induction and refused to submit to induction in order to exhaust his administrative remedies under the Act and Regulations. If you find and believe, or have a reasonable doubt thereof, that the defendant refused to submit to induction because he reported to exhaust his administrative remedies in order to challenge the action of the draft board and court, and if you further find and believe that the defendant in good faith honestly believed that he was exempt because he was a minister of religion as his grounds for refusing to submit to induction, you may acquit the defendant and by your verdict say "not guilty".

DEFENDANT'S REQUESTED INSTRUCTION No. 28

The evidence in this case shows that the defendant is one of Jehovah's witnesses. It is generally known that Jehovah's witnesses do not salute the flag for conscience's sake. Under the Constitution of the United States, which is the law of the land, Jehovah's witnesses have a legal right to refuse to salute the flag for conscience's sake. They refuse to salute the flag because they believe that it requires them to violate their covenant obligations to Almighty God and the commandments laid down in His Word in Exodus 20: 3-5: "Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me."

The Supreme Court of the United States has held that the refusal to salute the American flag on account of this belief is lawful and proper and that Jehovah's witnesses cannot be penalized for refusing to salute the flag for such reason. Accordingly, in passing upon the guilt or innocence of this defendant, you will not consider or discuss the fact that he, as one of Jehovah's witnesses, does not salute the American flag. It is a right that he has in the exercise of his conscience the same as any other person claiming a different belief of the Bible would have to refuse to do things contrary to their consciences, such as the Catholic's right to refuse to eat meat on Friday, and the orthodox Jew's right to refuse to eat pork.

Friday, December 8, 1944.
10:00 A.M.

MORNING SESSION

(Mr. Covington addresses the jury on behalf of the defendant).

(Mr. Mashank addresses the jury on behalf of the Government).

Oral Charge of the Court

Schoonmaker, J.

Members of the Jury:

The defendant in this case, William Murray Estep, is on trial before this Court and this jury on an indictment returned into this court charging him with a violation of the Selective Training and Service Act of the United States; and the indictment charges that, having become a registrant under the Selective Training and Service Act of 1940, the defendant, having become classified under the provisions of that Act by his Local Draft Board No. 4 at Canonsburg, became delinquent in that he did unlawfully and wilfully and knowingly fail and refuse to submit to induction into the United States Navy.

Now, the law of this case is for the Court; we are to instruct you as to the law governing this case, and you are to accept the law as given you by the Court and apply that law to the facts of this case, as you find them to be. The first principle of law to which I direct your attention is what is known as the presumption of innocence. In every criminal case the defendant comes into court presumed to be innocent, and that presumption of innocence rests with the defendant until you the jury become satisfied by the proof beyond a reasonable doubt that the defendant is

guilty of the offense charged against him. And by a reasonable doubt we mean a doubt arising reasonably out of the evidence or the lack of it. It is not a captious doubt, it is not a doubt engendered in your own minds just simply to escape the responsibility that the law casts upon you. It must be an honest and substantial doubt arising from the evidence or the lack of it, just such a doubt as might occur to any one of you when called upon to consider a matter of personal importance to yourselves in your own private affairs that would cause you to hesitate in arriving at a particular conclusion.

Now, under the Selective Training and Service Act of 1940, persons liable for military service under the Act are classified by their Local Draft Boards and called for service under the provisions of that Act. If a man files his questionnaire with the Local Board, and they consider his classification and list him in a particular classification, then that is the finding of the Board. If he is not satisfied with the classification given him by the Local Board he has a right of appeal to the Appeal Board established under the draft system Act, and even beyond that there are provisions in the Act in certain cases for appeal even to the President of the United States as to the proper classification. But when the classification established by the Act has been made and the person so classified has been ordered to report for duty, then it would be a violation of this Act if he failed to report. And in this particular case, in determining whether a man has violated this law or not neither this Court nor this Jury has the right to pass upon the correctness of the classification of the Draft Board and the various Appeal Boards. We must accept that as a proper classification; and the only issue we have to determine in this case is whether or not this defendant complied with the law by submitting to induction or not. If you find from the evidence and are satisfied by the proof beyond a reasonable doubt that he did fail to submit to induction under the provisions of this Act, then you ought to find him guilty. If you cannot so find,

then you ought to find him not guilty.

Now, as to the evidence in this case, there is no dispute as to the facts of this case as to the classification of this man. He was classified. There is no dispute over the fact that he was ordered to report for induction, and there is no dispute over the fact that he failed to submit to induction. The evidence offered by the Government is to that effect, and the defendant himself admits that to be true. So that you have no real dispute in this case as to the issues of the facts. Under the record in this case it is not for you to say whether this man is a minister of the gospel or not; you accept him as a registrant in Class 1-A, liable for military duty. If the Board has made a mistake in his classification, this is not the place nor the time nor have we the power to review the correctness of the decision of the Draft Board. So we must accept that as a fact.

We say to you, under all the evidence in this case if you find that the defendant failed to submit to induction then you should find him guilty; and if you do not so find, you should find him not guilty.

Counsel for the defendant has submitted to us twenty-eight requests for instructions to this jury. These several instructions, 1 to 28 inclusive, insofar as we have not discussed the matters therein contain in our charge to you we refuse these requests for instructions.

I will speak to counsel at side bar.

The Court (at side bar): And now, at side bar, out of the hearing of the jury, I propound this question to the United States Attorney: Have you request for further or additional charges on any point?

Mr. Mashank: No, I haven't, Your Honor.

The Court: I propound the same question to the counsel for the defendant.

Mr. Covington: I have no additionals but I re-urge my requests Nos. 1 to 28 separately and ask that the

Court charge as requested therein.

The Court: We deny these requests.

Mr. Covington: With exception; exception separately —is that not right?

The Court: Counsel on either side may note any exceptions they desire to note on the record at this time.

Mr. Mashank: I have no exceptions.

Mr. Covington: At this time the defendant excepts to the entire charge as a whole—

The Court: I don't think you are entitled to that.

Mr. Covington. (Continuing):—because it fails to charge as requested by the defendant by requested charges Nos. 1 to 28, inclusive.

Now I direct the Court's attention to that part of the Court's charge, in the first part thereof, where in discussing the process of the Selective Service System and the process of classifying an individual within that administrative agency upon a claim for classification the Court, among other things, said concerning classification: "But when the classification has been made and the person so classified has been ordered to report" —etcetera—"It would be a violation of the law if he failed to report." Then he goes on to discuss about the classification being conclusive. I take exception to that portion of the Court's charge.

The Court: An exception will be noted in these particulars.

Mr. Covington: Now, I direct Your Honor's attention to that part of the Court's charge, in the early part thereof, where this Court in defining the process of classification and the process of operation of the Selec-

tive Service System said, among other things, to the jury that "Neither this Court nor this jury have the right to question the classification, but we must accept that as binding and conclusive, and the defendant must submit to induction before he can question it". We except to that entire part of the Charge, because of this fact: The decisions of the Supreme Court of the United States in the *Billings case* and in the *Fulbo case* say that the administrative remedies have been exhausted sufficiently to entitle him to a judicial review in defense to an indictment when he has been accepted. In this case the record shows the defendant has been accepted for training and service and that he has exhausted his administrative remedies, and therefore this charge of the Court is contrary to those decisions; and, moreover, the charge of the Court has in effect denied the defendant the right to urge in defense to the indictment that he is a minister; it has denied the defendant the right to challenge the classification in defense to the indictment; and it has in effect instructed the jury to convict the defendant, by telling them that they cannot consider any of the evidence that is in the record relative to this man's ministerial status and erroneous classification. This portion of the Court's charge has in effect denied the defendant of his right to a judicial trial on the inquiry—

The Court: What is the issue in this case?

Mr. Covington: The issue in this case is whether or not the Draft Board orders and the orders of the Armed Forces are invalid and illegal. That is the issue, —and whether or not they have acted in excess of their authority and in excess of their jurisdiction in ordering a man who Congress says is exempt to report for duty.

The Court: Haven't you raised that question at side

bar sufficiently, and we have held his remedy is by a writ of habeas corpus?

Mr. Covington: The courts have held, especially in the *Billings case* and again in the rationale of the *Falbo case,* and again in the *Eng case,* it was definitely held that when the administrative remedies have been exhausted and the defendant has been accepted it is not necessary for him to submit to induction, for if he is required to submit to induction he will waive his rights to challenge the classification by agreeing to become a good soldier by taking the oath, and his remedy would not be available by habeas corpus. Moreover, habeas corpus is a judicial remedy, and a man cannot be compelled to submit to induction and undergo severe penalties for possible infraction of military orders and regulations in order to obtain review. On the contrary, Congress intended that when a man had exhausted his remedies by being accepted he should have a right to defend to an indictment on the grounds he is a minister. Therefore, for all these reasons we have said to Your Honor, the denial of the right of the jury to inquire, or for the Court to tell the jury that even the Court cannot question it, is in effect denying the defendant of his rights and liberties without due process of law, and it converts the Act into a bill of attainder contrary to the Constitution of the United States.

The Court: If this jury should convict him and this court should sentence him, he would have the right to review this whole matter on a petition for a writ of habeas corpus.

Mr. Mashank: I don't think you could after a conviction.

Mr. Covington: I don't think you could; I don't dispute that.

Mr. Mashank: I don't think you could after convic-

tion; he could have the matter reviewed by the court of appeals in the regular manner. But that isn't the interpretation of the Billings case. The Billings case says that a man must be actually inducted. Acceptance for service is not actual induction. He must be actually inducted before the administrative process is exhausted, and up to that time he cannot have this Court review his classification.

The Court: We will note an exception in the particulars requested by counsel for defendant.

Mr. Covington: Now, if Your Honor please, I desire to call the Court's attention to a later part of the Court's charge, where the Court told the jury that under the Selective Training and Service Act—that is the law—and the record in this case—The Court said, it is not for you to say, nor has the law placed in our is a minister or not. If the Board made a mistake in classifying him and the Appeal Board made a mistake in classifying him, even in defense to this indictment it is not for you to say, nor has the law placed in our —my or your power the right to review the question of classification". And I take exception to that portion of the Court's charge, because of each of the reasons that I have previously stated when we discussed the exception immediately preceding this, which I incorporate herein by reference as though repeated at length; and say that this particular portion of the Court's charge denies the defendant his right of a trial by jury. The issue in this case is really whether he is a minister, whether the Board has arbitrarily and capriciously ignored his evidence, whether it had authority to order him to report for induction, whether the orders of the Armed Forces based on those administrative orders are also void, and that is a matter for the Court and for the jury to inquire into; and when the Court says that the jury cannot consider that, that

is in effect telling the jury that they have no right to pass on this man's innocence; it is in effect telling the jury to convict the defendant, to disregard evidence that is in the record. now of his being a minister—

The Court: If we accept your theory, we would put this court and this jury into the position of a draft board.

Mr. Covington: No, I would put you into your position where you belong, and that is acting as an arm of the judiciary of the United States to determine and question whether or not an administrative agency has authority and the power to order a man to be inducted, and who Congress says cannot be inducted because he has been exempted. And since we claim that the Board has ignored the law, has ignored the evidence, then that is the prerogative or function and the highest privilege of the United States district judge to protect the rights of that person under the law, in defense to an indictment, by permitting the jury to inquire; and if the court holds that the jury nor the court cannot inquire as to whether or not this man is exempt, and that the Board had no authority or jurisdiction, it is in effect denying him a judicial trial and instructing the jury to convict a man, and the court wouldn't do that in the foulest murder case; and here the court has taken away everything for the jury to consider in this case. And therefore his rights and his liberty are denied and abridged, contrary to the due process clause; the court has transferred the judicial power of the United States district court from the court and jury to the Draft Board, and without appeal to the Supreme Court, in violation of Article III of the Constitution of the United States. I say the Court can then properly review the law, in my opinion, in the requested charges, and those requested charges would be followed in submitting the law to the jury. And I except to the Court's

charge in these particulars and against the particular part that I have just referred to, for each and every one of the reasons I have stated. And I think it is a serious matter and one that is not clearly supporting the view that the Court has taken, especially in view of the expressions of the Supreme Court in the Bllings case. Did you ever read that opinion, Your Honor?

The Court: Sure. (Informal discussion, off the record, between Court and counsel).

Mr. Covington: I note my exception, as above taken, to the specified portions of the Court's charge, and ask the Court to note those exceptions.

The Court: They will be noted.

(Jury retired at 11:06 o'clock A.M.)

■

And now, Friday, December 8, 1944, at 4:05 P.M., counsel for the Government and for the defendant appeared before the Court, the defendant also being present in person.

Mr. Covington: May it please the Court, at this time the defendant, William Murray Estep, after being advised by the Court that the jury has returned a note to the Court that they cannot reach a unanimous verdict but that they stand eleven to one, has discussed the matter with me, and we have agreed to let this case be decided by a majority verdict; and the defendant hereby waives his Constitutional right to a unanimous verdict. Of course, we reserve the right of any other exception on questions that we have raised on this appeal, and do not intend to waive anything except the right to have a unanimous verdict. Mr. Estep has signed the written waiver, and I now tender it to the Court.

The Court: You had better sign it, and Mr. Mashank also had better sign it as agreeing to it. (Said waiver signed by counsel, as requested). This written stipulation, signed by defendant, his counsel, and by counsel for the Government, may be filed of record. I am now going to summon the jury to the jury box and say that the parties have agreed that they may return a verdict without being unanimous. Is that agreeable?

Mr. Covington: Yes, sir.

Mr. Mashank: Yes, Your Honor.

(Jury returned to jury box).

THE COURT: Members of the Jury, I have received a communication from your Foreman which says, "Jury stand eleven to one, with no apparent hope of change. Please advise". That is the present situation of the jury, is it?

THE FOREMAN: That is the present situation.

THE COURT: The counsel for the parties have entered into a written stipulation, which I have ordered to be filed, which reads as follows: "I, William M. Estep, defendant in the above case, hereby waive my Constitutional right to a unanimous verdict, and upon advice of counsel hereby agree to let this case and the issue of my guilt be decided by a majority verdict of the jury. (Signed) William M. Estep, defendant; Hayden C. Covington, Attorney for Defendant; George Mashank, Attorney for Plaintiff." If you can agree on the form of your verdict so far as the eleven who are in accord without going back to your jury room, you may make it up right here; and if you need to go back, you may go back with these instructions. How do the eleven stand, guilty or not guilty?

THE FOREMAN: Guilty.

The Court: Let me see your verdict form. (Same handed

to the Court). Will counsel come to side bar? (Conference at side bar between Court and counsel).

Members of the Jury, as I have said, the parties have stipulated that we may take a majority verdict in this case, and I have prepared a verdict form as follows: "And now, December 8, 1944, we eleven of the jurors impaneled in the above entitled case find the defendant guilty as indicated. This verdict is rendered in pursuance of the stipulation of the parties filed herein to the effect that the issue of the guilt of the defendant may be decided by a majority verdict of the jury." Your foreman may sign that, and we will take the verdict of the jury.

(Verdict of "guilty" rendered by jury, as above set forth).

Certificate

I HEREBY CERTIFY that the foregoing pages contain a correct transcript of all the evidence taken upon the trial of the case of UNITED STATES OF AMERICA vs. WILLIAM MURRAY ESTEP, at No. E-4538 Criminal; together with the offers of counsel, objections thereto, rulings of the Court thereon and exceptions thereto, and the Charge of the Court and exceptions thereto.

Harriet Cole Thomas
Official Reporter.

Pittsburgh, Pennsylvania,
December 11, 1944.

And now, Wednesday, December 20, 1944, at 10:00 o'clock A.M., the above entitled matter came before the Court for the purpose of sentence being pronounced.

Present:

For the Government: George Mashank, Esq., Assistant U. S. Attorney.

For the Defendant: Hayden Covington, Esq.

(Defendant in person).

Mr. Covington: If Your Honor please, we have the matter of the sentence in the case of United States of America vs. William Murray Estep, in which I appeared as counsel for the defendant. I have written the Court a letter about my views in the matter—

The Court: Yes, I have your letter.

Mr. Covington (continuing:—and sent a copy to the District Attorney. And at this time there is nothing further I desire to say to the Court. It may be that Mr. Estep may want to say a few words to the Court before sentence is imposed—do you (addressing defendant)?

The Defendant: Yes, I do.

The Court: All right; go ahead.

The Defendant: Your Honor, I stand before this court now, as I stood all through the trial, as an ordained minister of the gospel and an ambassador of Jehovah's Theocratic Government, and as an ambassador and a minister I am required to maintain a faithful covenant relationship with my Creator by keeping myself apart from worldly activities, in order that all my time may be devoted to the ministry. But there is more required of me than merely keeping myself in a position of

neutrality as an ambassador; but the obligation is laid upon me to preach the gospel of the kingdom in the manner that Christ Jesus and His Apostles preached, from house to house. In obedience to this command, I have visited the homes of the people, leaving with them Bible publications, left with them in the form of printed sermons, and these point out to the people the opportunity which they have of gaining everlasting life in Jehovah's kingdom which He has promised to establish here on the earth, and which has been promised and prayed for by Christian nations some nineteen hundred years and more. This message is not only a means of comfort to people of good will who desire something more than the present world has to offer, but it also serves as a means of warning of the impending battle of Armageddon which is soon to come upon this earth, which will destroy all flesh except that which receives protection from the Almighty Creator.

This fact places great responsibility upon this court, because it is my obligation as a servant of Almighty God to warn these persons of this impending destruction, and if they refuse to heed that warning and are destroyed their blood is upon their own heads; but if I am restrained from giving such warning and such persons die, being ignorant of this provision which Almighty God has made for their salvation, then the responsibility lies upon those who have so restrained me.

As a minister, I am under obligation and it is my duty to obey all the laws of the United States which are not in conflict with God's law. Therefore, when I received a notice to report for induction I reported at the induction center and complied with all the laws, all the regulations, up to actual induction into the armed forces. And in so doing I believe that I have in every respect "rendered unto Caesar the things that are Caesar's", and by refusing to take the oath, which I

sincerely believe would have been a violation of my covenant with my Creator, I have "rendered unto God the things that are God's". I could not do otherwise in the course which I have followed in this case, for such would be to "render unto Caesar the things that are God's".

THE COURT: Well, this court has no power to pass on the correctness of your classification under the laws of the United States within our province.

The Defendant: I merely wish to bring out that it was not I who violated the law, but rather the Local Board by refusing to consider the evidence—

THE COURT: That is on their conscience, not on mine.

The Defendant: But the information was filed with them that not only was I a full-time ordained minister by authorization of the Watch Tower Society since—

THE COURT: Well, they didn't agree with your contention and made their judgment, and I have no power to change it. You stand before this court now just as any other man does who violated the laws of the United States.

The Defendant: I stand before this court as a minister and not for the purpose of asking any mercy, but rather to perform my duties as a minister to appear as Christ Jesus would have appeared, in order to bear witness of the truth. I ask that consideration might be given to this. The Local Board not only refused—

THE COURT: You have chosen to live in the United States of America. You are not forced to live here. And as long as you live here you will have to live in accordance with the laws of the society you have chosen to live in.

The Defendant: That is true; the laws which have been drawn up in the Selective Service regulations were drawn up by honest men and provision was made for ordained ministers, recognized ministers of recognized religious organizations.

THE COURT: If you desire relief it would be through the Selective Service procedure, not through this court. We have no power to change your classification.

The Defendant: I merely wish to state then I appear as your minister would have appeared, having been denied—deprived of my ministerial rights. I wish to make this point clear, that I have been unlawfully charged with violating some law which could not apply to me in the first place, being a minister of the gospel.

THE COURT: It has been held that you are within the provisions of that statute, or the agency that is set up to determine that fact, and we must accept that as true. The sentence of the court is, you be committed to the custody of the Attorney General for commitment in a proper institution for the period of five years, and stand committed until that sentence is complied with.

EXHIBITS

[Immaterial portions of documents are omitted in printing. Handwritten or typewritten material is distinguished from wording of printed form by *italics*.]

Government's Exhibit 1

[Admitted in Evidence]

Selective Service Questionnaire

D.S.S. Form 40
(Revised Jan. 12, 1942)
Order No. *11918* Date of mailing *AUG 12 1942*
Name: *William Murray Estep*
Address *195 Summit Ave. Canonsburg, Wash. Pa.*

THIS QUESTIONNAIRE MUST BE RETURNED ON OR BEFORE *AUG 22 1942*

Earl S. Davidson
Member of Local Board

Local Board No. 4 32
Washington County 125
AUG 22 1942 004
State Armory
Canonsburg, Pa.

STATEMENTS OF THE REGISTRANT
Series I.—IDENTIFICATION

1. My name is *William Murray Estep*
2. In addition to the name given above, I have also been known by the name or names of *None*
3. My residence now is *195 Summit Avenue Canonsburg Washington Pennsylvania*
4. My telephone number now is *Canonsburg 868-J*
5. My Social Security number is *192-18-8119*
6. I was *20* years of age on my last birthday.

Series II.—PHYSICAL CONDITION (Confidential)

1. To the best of my knowledge, I *have no* physical or mental defects or diseases.

Series III.—EDUCATION

1. I have completed *8* years of elementary school and *4* years of high school.
2. I have had the following schooling other than elementary and high school: *None*
3. I *can* read and write the English language.

Series IV.—PRESENT OCCUPATION OR ACTIVITY

1. I am now *x* working at the job described under No. 2 below.
2. *(a)* The job I am now working at is *Minister*
   (b) I do the following kind of work in my present job: *Perform missionary and evangelistic service in organizing churches.*
   (c) I have had *1* years experience in this kind of work.
   (e) In my present job, I am—
   x an independent worker, working on my own account, not hired by anyone, and not hiring any help.
   (f) I *am not* now employed in national defense work.

Series VI.—OCCUPATIONAL EXPERIENCE, QUALIFICATIONS, AND PREFERENCES

1. I have also worked at the following occupations other than my present job, during the past 5 years:

Occupation *Mason's Laborer* Kind of Work Done *I supply bricklayers with bricks and mortar and also mix mortar.* Years Worked From *1941* to *1941*

2. My usual occupation, or the occupation for which I am best fitted, is *minister of the Gospel*
3. I *am not* licensed in a trade or profession.

Series VII.—FAMILY STATUS AND DEPENDENTS
(Confidential except as to names and addresses of claimed dependents)
1. I am *x* single.

Series VIII.—MINISTER, OR STUDENT PREPARING FOR THE MINISTRY

1. *(a)* I *am* a minister of religion. *(b)* I *do* customarily serve as a minister.
   (c) I have been a minister of the *Jehovah's Witnesses* since *March 1936*
   (d) I *have* been formally ordained. If so, my ordination was performed on *October 1 1942* by *J. Sullivan* at *Brooklyn N.Y.*
2. *(a)* I *am not* a student preparing for the ministry in a theological or divinity school.

Series IX.—CITIZENSHIP

1. I was born at *Canonsburg Pennsylvania U.S.A.*
2. I was born on *August 9 1922*
4. I *am* a citizen of the United States.

Series X.—CONSCIENTIOUS OBJECTION TO WAR

INSTRUCTIONS.—Any registrant who, by reason of religious training and belief, is *conscientiously opposed to participation in war in any form* shall sign the statement below requesting a Special Form for Conscientious Objector (Form 47) from the local board which must be completed and returned to the local board for consideration.

By reason of religious training and belief I am conscientiously opposed to war in any form and for this reason request that the local board furnish me a Special Form for Conscientious Objector (Form 47) which I am to complete and return to the local board.

William Murray Estep

Series XI.—COURT RECORD (Confidential)

1. I *have not* been convicted of a crime, other than minor traffic violations.

REGISTRANT'S STATEMENT REGARDING CLASSIFICATION

In view of the facts set forth in this Questionnaire it is my opinion that my classification should be Class 4-D
See attached statement.

REGISTRANT'S AFFIDAVIT

State of ....., County of ....., ss:
I, ..., do solemnly swear (or affirm) that I am the registrant named and described in the foregoing statements in this Questionnaire; that I have read (or had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing *are* in my own handwriting.

Registrant sign here *William Murray Estep*

Subscribed and sworn to before me this *22* day of *August*, 1942

Ruth E. Quay
(Signature of officer)

MINUTE OF ACTION BY LOCAL BOARD No. *4*, COUNTY *Washington*, STATE *Pennsylvania*

The local board classifies the registrant in Class *1*, Subdivision *A*, by the following vote: Yes *3*, No *0*

October 3, 1942 *T. M. Reese*
(Date) *Member.*

MINUTE OF ACTION BY BOARD OF APPEAL
No. *8*, COUNTY *Washington*, STATE *Penna.*

The board of appeal classifies the registrant in Class *1*, Subdivision *A*, by the following vote: Yes *4* No *0*

8/2/44 *Frank E. Pireaux*
Member.

BOARD OF APPEAL
AREA NO. 8
Court Square Arcade
Washington, Pa.

APPEAL TO PRESIDENT

I hereby appeal to the President from the determination of the board of appeal.

MINUTES OF OTHER ACTIONS

10/3/42 *Form 57 to registrant.* *T. M. Reese*
5/5/44 *Form 218 mailed registrant.* *W. A. Moron*
8/28/44 *Received from Appeal Board and continued in Class 1-A Form 57 to registrant, 59 to G.A.A.* *T. M. Reese*

Government's Exhibit 2

[Admitted in Evidence]

September 1, 1944
(Date of mailing)

Order to Report for Induction

The President of the United States,
To William Murray Estep
Order No. 11918

GREETING:

Having submitted yourself to a local board composed of your neighbors for the purpose of determining your

availability for training and service in the land or naval forces of the United States, you are hereby notified that you have now been selected for training and service therein.

You will, therefore, report to the local board named above at State Armory, Canonsburg, Pa. (Place of reporting), at 7:30 a.m. (Hour of reporting), on the 11th day of September, 1944.

This local board will furnish transportation to an induction station. You will there be examined, and, if accepted for training and service, you will then be inducted into the land or naval forces.

Persons reporting to the induction station in some instances may be rejected for physical or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any undue hardship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Willful failure to report promptly to this local board at the hour and on the day named in this notice is a violation of the Selective Training and Service Act of 1940, as amended, and subjects the violator to fine and imprisonment.

If you are so far removed from your own local board that reporting in compliance with this order will be a serious hardship and you desire to report to a local board in the area of which you are now located, go immediately to that local board and make written request for transfer of your delivery for induction, taking this order with you.

J. W. McNutt

Clerk of the local board.

D.S.S. Form 150
(Revised 1-15-43)

Defendant's Exhibit A

[Identified only, not admitted in evidence]

DOCUMENTS PROVING MINISTRY

[1] Letter of May 23, 1944

195 Summit Avenue
Canonsburg, Pennsylvania
May 23, 1944

Selective Service
Local Board No. 4
Washington County
State Armory
Canonsburg, Pennsylvania

Gentlemen:

I went over my Selective Service file yesterday and found that certain statements which had been attached to my questionnaire; ministerial certificate from the Watchtower Bible & Tract Society dated December 24, 1941; copy of "Consolation" magazine No. 569 (containing an article setting forth the opinion of National Headquarters of Selective Service concerning Jehovah's witnesses as ordained ministers); letters of October 10 and October 27, 1942 to Local Board No. 4; and copy of letter from Local Board No. 4 dated October 22, 1942 are all missing from my file. I have prepared copies of these letters and statements and attach them hereto.

I believe that Local Board No. 4 has not given sufficient consideration to my case, and I request that they again reconsider it and give me my proper classification as a regular and duly ordained minister, namely, IV-D. In October, 1942 I presented to the Local Board for filing in my file a sworn statement dated October 17, 1942, and affidavits from C. R. Hessler, Earl Ferree, and William G. Reese. At that time I was advised that my file had been sent to the Appeal Board and that these papers could not be added to the file.

Apparently the file has not been sent to the Appeal Board as yet, and I enclose these affidavits and request that the Local Board consider them and add them to my file.

I also attach eight additional affidavits from persons who recognize me as a minister, and a petition signed by fourteen of Jehovah's witnesses associated with the Washington, Pa. Company of Jehovah's witnesses (with which company I was associated until last October), who recognize me as a regular and duly ordained minister. It is requested that these additional eight affidavits and petition be considered by the Local Board at this time and that they be added to my file.

If the Local Board should refuse to classify me in Class IV-D, it is requested that this letter be treated as my appeal from Class I-A to Class IV-D, and that the Appeal Board for this district review my case. The following reasons are assigned for classification to that of IV-D:

1. My file shows conclusively that I am a regular and duly ordained minister of religion, having received my appointment from the Watchtower Bible and Tract Society, Inc., of Brooklyn, New York, and being recognized as a minister by others of Jehovah's witnesses.
2. The Local Board in its refusal thus far to place me in Class IV-D as a regular and duly ordained minister of religion has been arbitrary, unfair and discriminative, contrary to Section 623.1 (c) which provides: "In classing a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, or religious, or other organization. Each registrant shall receive equal and fair justice."
3. I meet all the requirements for being recognized as a duly ordained minister of religion. The facts show that I have engaged in ministerial work as one of Jehovah's witnesses since 1935, and have devoted all of my time to ministerial service since October 1941, having received

my ordination as a pioneer in December 1941.

4. The Local Board is and has been fully aware of my position as a pioneer or full-time minister of Jehovah's witnesses. Yet, by its refusal to properly classify me as a minister, it would force me to spend all of my time in some branch of the armed services. This I could not do because it would be a violation of my covenant with Jehovah God, since I have agreed to devote all my time and energy to ministerial work. Also if I were deprived of my duty to preach the good news of God's Kingdom from house to house, many sincere and honest persons would be denied the opportunity to learn of God's Kingdom and its attending blessings. The responsibility is laid upon me to now inform these people of Jehovah's purpose to establish his righteous, everlasting Kingdom in all the earth. I cannot throw off these covenant obligations for any reason, for such would mean my everlasting destruction.

Respectfully submitted,
William M. Estep
Order No. 11918

[2] "Ministerial Certificate"

[This attachment to Defendant's Exhibit A is printed as Defendant's Exhibit C at pages 192-193, infra.]

[3] Opinion published in *Consolation* magazine No. 569

VOL. III OPINION NO. 14
NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

SUBJECT: Ministerial status of Jehovah's Witnesses

Facts:

Jehovah's Witnesses claim exemption from training and service and classification in Class IV-D as duly

ordained ministers of religion under Section 5 (d), Selective Training and Service Act of 1940 and Paragraph 360, Selective Service Regulations which read as follows:

Section 5 (d):

> "Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

Paragraph 360:

> *"Class IV-D: Minister of religion or divinity student.—a.* In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in theological or divinity school recognized as such for more than one year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).
>
> *b.* A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.
>
> *c.* A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties."

Question.—May Jehovah's Witnesses be placed in Class IV-D as regular or duly ordained ministers of religion exempt from training and service?

Answer:

1. The Watchtower Bible and Tract Society, Inc., is incorporated under the laws of the State of New York for charitable, religious, and scientific purposes. The unincorporated body of persons known as Jehovah's Witnesses hold in common certain religious tenets and beliefs and recognize as their terrestrial governing organization the Watchtower Bible and Tract Society, Inc. By their adherence to the organization of this religious corporation the unincorporated body of Jehovah's Witnesses are considered to constitute a recognized religious sect.

2. The unusual character of organization of Jehovah's Witnesses renders comparisons with recognized churches and religious organizations difficult. Certain members of Jehovah's Witnesses, by reason of the time which they devote, the dedication of their lives which they have made, the attitude of other Jehovah's Witnesses toward them, and the record kept of them and their work, places them in a position where they may be recognized as having a standing in relation to the organization and the other members of Jehovah's Witnesses, similar to that occupied by regular or duly ordained ministers of other religions.

3. There are those members of Jehovah's Witnesses who devote their full time and effort to the manufacture and production of books, pamphlets, and supplies for the religious benefit of Jehovah's Witnesses, the purpose of which is to present the beliefs of Jehovah's Witnesses and to convert others. For their religious services the members of this group receive their subsistence and lodging and in addition a very modest monthly allowance. This group of individuals consists of the office and factory workers at 117 Adams Street, Brooklyn, New York, and of the Bethel

family, which includes workers in the executive offices at 124 Columbia Heights, Brooklyn, New York, and at the Farms. The names of those who form this group are recorded in the executive offices of the Watchtower Bible and Tract Society, Inc. Members of this group who devote their entire time and effort to the publications and supplies of the Society have a standing in relationship to that organization and the other members of Jehovah's Witnesses which brings them within the purview of Section 5 (d) of the Selective Training and Service Act of 1940 and they may be classified in Class IV-D, providing their names appear on the certified official list of such persons transmitted to State Directors of Selective Service by National Headquarters of the Selective Service System.

4. The members of Jehovah's Witnesses who devote their time to the work of teaching the tenets of their religion and in the converting of others to their belief, and who enjoy the esteem of other Jehovah's Witnesses, and are each individually recorded as "pioneers" by the Watchtower Bible and Tract Society, Inc., at its executive offices in Brooklyn, New York, are in a position where they may be recognized as having a standing, in relationship to the organization and to the other members of Jehovah's Witnesses, similar to that occupied by regular or duly ordained ministers in other religions, and such persons who spend all or a substantial part of their time in the work of Jehovah's Witnesses, as set forth above, come within the purview of Section 5 (d) of the Selective Training and Service Act of 1940 and may be classified in Class IV-D, provided that the names of such persons appear on the certified official list of such persons transmitted to State Directors of Selective Service by National Headquarters of the Selective Service System.

5. The members of Jehovah's Witnesses who occupy the capacities are known by the various names of regional servants, zone servants, company servants, sound servants,

advertising servants, back-call servants, and by other similar descriptive titles, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's Witnesses. The deference paid to these individuals by other members of Jehovah's Witnesses also varies in a great degree. It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions which are normally performed by regular or duly ordained ministers of other religions, and finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.

6. In the case of Jehovah's Witnesses as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision.

Lewis B. Hershey.

LEWIS B. HERSHEY
Deputy Director

Legal
June 12, 1941
File Reference III—Ministers
Sec. 5 (5); Par. 360. S.S.R.

[See Amended Opinion No. 14
printed at pages 245-248, infra.]

[4] Letter of October 10, 1942

[This attachment to Defendant's Exhibit A is printed as Defendant's Exhibit D at pages 193-194, infra.]

[5] Letter of October 27, 1942, with Annexed Statement

[This attachment to Defendant's Exhibit A is printed as Defendant's Exhibit H at pages 213-215, infra.]

[6] Letter of October 22, 1942

[This attachment to Defendant's Exhibit A is printed as Defendant's Exhibit G at page 212, infra.]

[7] Defendant's Affidavit, October 17, 1942

"THIS ONE THING I DO"
- ADVERTISE -
THE THEOCRACY

To Whom It May Concern:

I, William Murray Estep, presently reside at 195 Summit Avenue, Canonsburg, Pennsylvania, and am registered with Local Board No. 4, Washington County, State Armory, Canonsburg, Pennsylvania, as follows:

Name: William Murray Estep
Address: 195 Summit Avenue, Canonsburg, Pennsylvania
Selective Service Order No.: 11918
Present Classification: 1-A.

I have been associated with the organization of Jehovah's witnesses since childhood, having been raised in this faith. I have been particularly active in the work of preaching the gospel since 1935, and was baptized, or immersed, in 1936.

In March, 1940 I was appointed by the Watchtower Society to the position of Advertising Servant in the Washington Company of Jehovah's witnesses, Washington, Pennsylvania, which position I still hold.

I have been a pioneer for a little over a year. Before that time I was active in the organization of Jehovah's witnesses as a company publisher, attending Bible meetings where the Watchtower publications are studied. During this period I had often considered the privilege of engaging full time in the Lord's service as a pioneer. The reason for this desire was that I might have a greater part in proclaiming "this gospel of the kingdom" and devoting all my time thereto. Unfortunately, this desire was not realized until 1941.

While in attendance at the Theocratic Assembly of Jehovah's witnesses at St. Louis in August of 1941, I listened to various lectures on the seriousness of these last days and the great part which Jehovah's witnesses play in comforting those that mourn, by proclaiming God's word. Among these lectures was one which emphasized the blessings and privileges of the pioneer work.

After considering this lecture, and in view of what I had already studied, I realized that this was an opportunity which might not present itself again. The following day, August 9, I enrolled as a pioneer, to begin activity October 1 of that year, thus allowing me time to give notice to my employer and arrange my affairs at home.

I sincerely believe that this work to which I have consecrated my life is the only means by which sincere persons today will receive Jehovah's protection, as is stated at John 8:32: "And ye shall know the truth and the truth shall make you free." It is therefore necessary that I be able to use my entire time that I might proclaim (preach) this gospel of God's kingdom. If, after having covenanted to do God's will, I should refrain from preaching, then my life would be required at God's hand: " . . . .for necessity is laid upon me; yea, woe is unto me, if I preach not the gospel!" (1 Cor. 9:16)

I believe I am entitled to classification as a minister because I have been ordained of God to preach, to wit: "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek . . . and to comfort all that mourn" (Isa. 61:1, 2), and because I have been active in fulfilling this commission by ministering from house to house and upon the streets: "And how I kept back nothing that was profitable unto you but have shewed you and have taught you publicly and from house to house." (Acts 20:20) "Wisdom crieth without and uttereth her voice in the streets." (Prov. 1:20)

At an early age I was privileged to take my stand for

the truth by refusing to take part in a patriotic ceremony which I sincerely believe would have put the State above Almighty God. For this reason I was deprived of a public school education (October, 1935), was threatened with incarceration in a reformatory by the school officials, and suffered much reproach by reason of the unfair, un-American publicity printed by the local newspaper. "If the world hate you, ye know that it hated me before it hated you." (John 15:18) For a fact, all true servants of God are persecuted for their stand for righteousness. I have experienced this myself in door-to-door witness work through all manner of insults and threats of violence against my person. This further proves my qualifications as a minister of Christianity and evidences that I am entitled to such classification.

My full time is devoted to the service of the Theocracy. As minimum of 150 hours per month is spent in preaching the gospel of God's Kingdom, and in conducting Bible studies in private homes, and the balance of my time is taken up with my duties as Advertising Servant of the Washington Company and other activities directly related thereto. I do not engage in any secular work at all.

I am recognized by others of Jehovah's witnesses as a minister of the gospel, and am attaching affidavits in support of this statement.

William Murray Estep (signed)

Sworn to and subscribed before me
this 17 day of October 1942.

(SEAL)

Ruth E. Quay (signed)
RUTH E. QUAY, Notary Public
My Commission Expires
May 6th, 1944

Defendant's Exhibit A

[8] Affidavit of C. R. Hessler

Oct. 13, 1942

To Whom It May Concern:

I, Charles R. Hessler, an American Citizen and resident of the State of Ohio, residing at 1166 Clague Road, West Lake, Ohio, deposes and says that I have been acquainted with William Estep, 195 Summit Ave., Cannonsburg, Pa. since January 1936.

Since childhood he has received Christian training for the ministerial work to which his life is now devoted. He has, by his course of action, given ample proof that his life is wholly devoted to the service and worship of Jehovah, the Almighty God, and that he is sincerely endeavoring to follow in the footsteps of Jesus in taking the Gospel Message—the Good News of the Kingdom—to others.

As a representative of the Watch Tower Bible and Tract Society, in the capacity of Zone Servant, Pennsylvania Zone No. 9, I came in personal contact with William Estep on many occasions and I can, therefore, testify that he is a properly ordained Christian minister and entitled to a 4-D Classification.

Yours very truly,
(Signed)
Charles R. Hessler

Cleveland, O.
Cuyahoga County
Oct. 13 - 1942
Geo. W. Ramsey (signed)

(SEAL)

Geo. W. Ramsey, Notary Public
My Commission Expires Feb. 19, 1944

[9] Affidavit of Earl Ferree

Kingdom Hall,
153 West Chestnut, St.
Washington, Pa.
October 12, 1942.

This is to certify that William M. Estep has been associated with Jehovah's Witnesses and acting as a minister of the "Gospel" since 1936, and with the Washington Penna. Company of Jehovah's Witnesses according to our records since 1938.

He has consecrated himself to do Jehovah's will and made outward show of his consecration by water baptism in 1936.

He has faithfully pursued a course of Bible study prescribed by the Watchtower Bible & Tract Society, and has shown himself capable to preach and teach this "Gospel of the Kingdom" Matthew 24:14.

Mr. Estep has spent a reasonable amount of time in service to the Lord each month preaching and teaching the Bible to the people from door to door as commanded at Acts 20:20. Since October 1941 he has put full time in as a pioneer which requires a minimum of 150 hours per month field service under the direction of the Watchtower Bible & Tract Society. This service work is all done in the territory assigned to the Washington Penna. Company of Jehovah's Witnesses. He has been advertising servant for the Washington Penna. Company since March 1941, which requires extra time and work outside of field service. This requires his presence at Company meetings.

Mr. Estep has the scriptural ordination to preach this "Gospel of the Kingdom" as recorded at Isaiah 61:1, 2 and 52:7. He is therefore recognized by the Washington Penna. Company of Jehovah's Witnesses as a duly ordained minister and in harmony with the Company is pro-

claiming the Kingdom message to others.

Earl Ferree (signed)
Company Servant,
Washington Penna.
Company of Jehovah's Witnesses

(SEAL)

Subscribed and sworn to before me,
Notary Public, on the 13 day of
October 1942.
Irene Hoover (signed)
My commission expires May 6, 1944.

[10] Affidavit of W. G. Reese

To whom it may concern:

This is to certify that I, W. G. Reese, 2830 Hudson Drive, Cuyahoga Falls, Ohio a duly ordained minister of Jehovah's Witnesses do hereby make the following statements:

I have been associated with this organization for twenty eight years and have known William Estep for seven years. To the best of my knowledge he has been attending the Bible studies of Jehovah's Witnesses at the Kingdom Hall in Washington, Pennsylvania regularly. He was baptized in the spring of 1936 and this baptism constitutes the ordination of William Estep as a minister of Jehovah's Witnesses in harmony with the requirements of the Watch Tower Bible and Tract Society. To the best of my knowledge he has abided by that ordination faithfully.

He became a full time publisher of Jehovah's Witnesses October 1, 1941. This means putting in at least 150 hours per month preaching the gospel of Gods Kingdom.

William G. Reese (signed)

Sworn to and subscribed before me this 10th day of October 1942.

F. O. Vail (signed)
Notary Public of
Summit County
State of Ohio

(SEAL)
F. O. Vail,
Notary Public
My Commission Expires
April 15, 1943

[11] Affidavit of O. G. Cuppett

Commonwealth of Pennsylvania,
COUNTY of FAYETTE, ss.

On this 16th day of MAY A. D. 1944 personally appeared before me, LUKE GILLIN. JUSTICE OF THE PEACE. MCCLELLANDTOWN. PA. in and for the aforesaid COUNTY duly authorized to administer oaths, OLIVER G. CUPPETT. MCCLELLANDTOWN. PA. who being duly SWORN according to law, doth depose and say PERSONALLY APPEARED OLIVER G. CUPPETT. MESSMORE, FAYETTE COUNTY. PENNSYLVANIA. AND COMPANY SERVANT FOR THE UNIONTOWN COMPANY OF JEHOVAHS WITNESSES AND ALSO AN ORDAINED MINISTER TO PREACH AND TEACH SUCH DOCTRINES OF THE BIBLE AS HELD OUT AND TAUGHT BY JEHOVAHS WITNESSES WHOSE HEAD OFFICE IS 117-ADAMS STREET BROOKLYN N.Y. WHO UPON OATH DULY ADMINISTERED ACCORDING TO LAW DOTH DEPOSE AND SAY THAT HE HAS KNOWN WILLIAM M. ESTEP OF BOX 88. CANNONSBURG. PA. SINCE 1936. HE IS ONE OF JEHOVAHS WITNESSES. AND AT TIME WAS A COMPANY PUBLISHER IN THE YEAR OF 1941. HE TOOK UP THE PIONEER WORK DEVOTING ALL OF HIS

TIME AND ATTENTION TO THE WORK OF PREACHING THE GOSPEL UNDER THE AUSPICES OF THE WATCH TOWER BIBLE AND TRACT SOCIETY 117 ADAMS STREET BROOKLYN. N.Y. HE IS A VERY CONSCIENTIOUS WORKER AND A FINE YOUNG MINISTER.

Oliver G. Cuppett (signed)
Company Servant

Sworn to and subscribed before me, this
16th day of MAY
A. D. 1944
Luke Gillin (signed)
JUSTICE OF THE PEACE.
(SEAL)
My commission expires
January First, 1948

[12] Affidavit of C. O. Dawson

May 16, 1944

TO WHOM IT MAY CONCERN:

This is to certify that I have known William M. Estep since 1936 and that he has been an active full-time Minister for Jehovah's witnesses to my knowledge since October 1, 1941. He still serves in that capacity, at the present time being assigned to Akron, Ohio.

By reason of these assignments I know that he is recognized by the Watch Tower Bible & Tract Society as a Pioneer or full-time regular or duly ordained Minister. I have found him to be a sincere and capable Minister.

Claude O. Dawson (signed)

Sworn and subscribed to before me
this 17th day of May 1944.
AGNES M. NIKISCHER, Notary Public
Notary Public
County of Allegheny ss
State of Pennsylvania

(SEAL)
AGNES M. NIKISCHER, Notary Public
My Commission Expires at End
of Next Session of Senate

[13] Affidavit of H. W. Fahl

THIS INDENTURE WITNESSETH

This will certify

That I have known personally and well William Estep, Canonsburgh, Pa. for a period of eight years or more, and in that way I know that he is actively engaged in the Work of the Christian Ministry, devoting all his time to that activity.

Also, that he attends Classes regularly completing a Bible Course of study covering all branches thereof, including related subjects.

Further, that he is a recognized and ordained Minister of the Watchtower Bible and Tract Society, Brooklyn, N Y; and in that way he instructs others in Bible Subjects . . . Much of this data comes from being under his acquaintance . . .

Yours Truly
Harry Wm. Fahl (signed)
4778 Sciote St.
Phg. (24) Pa.

Sworn to and subscribed before me this 19th day of May, 1944, at Pittsburgh, Pa.
J. L. McCaskey (signed)
N.P.
(SEAL)
J. L. McCaskey, Notary Public
My Commission Expires Feb. 7/47
6811 Kelly Street, Pittsburgh, Pa.
A Notary Public in and for the Commonwealth of Pennsylvania and County of Allegheny.

[14] Affidavit of R. L. Murray

UNITED STATES OF AMERICA

STATE OF Pennsylvania, County of Washington, ss.

Be it known, That on the day of the date hereof, before me, the subscriber, a Notary Public for the State of Pennsylvania, residing in the Amwell Township, Pennsylvania. . . . . personally appeared R. L. Murray, R. D. No. 1, Glenn Street, Washington, Pennsylvania . . . . . who being duly sworn, according to law, did depose and say, that he is the Assistant to the Presiding Minister of Jehovah's witnesses in Washington, Pennsylvania, and that he wishes to make the following statement concerning William M. Estep, Minister.

"I, R. L. Murray, certify that William M. Estep, is recognized by me as a Minister of the Gospel, and that it is further known to me that he has been a full time Minister since 1941. In such capacity he has assisted Jehovah's witnesses in Washington, Penna. in discharging their obligations to the Lord in 'preaching the gospel of the Kingdom.'

I also recognize him as a sincere and capable Minister, meeting the requirements laid upon him, which I am sure equal or exceed in greatness the requirements laid upon ministers of other organizations claiming Christian origin."

R. L. Murray (signed)

Sworn and subscribed before me
this 20th day of May
A. D. 1944
Irene Hoover (signed)
Notary Public.
(SEAL)
My commission expires
May 1, 1948.

[15] Affidavit of E. V. Singer

826 Orchard Grove Ave.,
East Liverpool, Ohio
May 16, 1944

To Whom It May Concern:

I, the undersigned, have been acquainted with William M. Estep of 195 Summit Ave., Cannonsburg, Pa. since the year 1935. At the time he was engaged as a minister for Jehovah's witnesses. In 1941 he discontinued all secular employment and became a full time minister for Jehovah's witnesses and to the best of my knowledge he is faithfully discharging his duties as such to-date. I consider him honest, conscientious and dependable.

Honestly submitted,
Earl V. Singer (signed)

Sworn to and subscribed before me this 16th day of May 1944 at East Liverpool, Columbiana County, Ohio.
W. F. Lunsford (signed)

W. F. LUNSFORD, Notary Public
Columbiana County, Ohio
My Commission Expires Oct. 19, 1945
(SEAL)

[16] Affidavit of C. H. Stewart, Jr.

May 16, 1944

To Whom It May Concern:

This is to certify that I have known William M. Estep since 1927. He was raised as one of Jehovah's witnesses and attended the Kingdom School at Gates, Pennsylvania from 1935 to 1940.

I know that he regularly devoted two or more hours per day to Bible study during his entire attendance at the Kingdom School. He has served as Advertising Servant of the Washington, Pennsylvania Company of Jehovah's witnesses from March 1941 until October 1943. He has regularly served as a full time Pioneer or Minister for the Watch Tower Bible & Tract Society since October 1941. I have been closely associated with Mr. Estep at various times since 1935 in connection with the work of Jehovah's witnesses and I know that Mr. Estep has been performing the duties of a regular and duly ordained Minister for Jehovah's witnesses from October 1941 up to the present time. I know by virtue of the duties assigned to Mr. Estep that he is recognized by the Watch Tower Bible & Tract Society as a regular and duly ordained Minister. I have found him to be a sincere Minister.

Charles H. Stewart, Jr. (signed)

Sworn and subscribed to before
me this 17th day of May 1944.
Agnes M. Nikischer (signed)
Notary Public
(SEAL)
County of Allegheny
State of Pennsylvania ss
AGNES M. NIKISCHER, Notary Public

My Commission Expires at End
of Next Session of Senate

[17] Affidavit of H. N. Stroh

To Whom It May Concern:

I, the undersigned, have known Wm. M. Estep of Cannonsburg, Pennsylvania, to be an authorized and appointed minister of Jehovah God. He has been a full time minister of the gospel message since February, 1941. He is very sincere and faithful to his anointing as a minister of "This Gospel" and, therefore, deserves this proper classification of 4-D as sought.

I shall be glad to furnish any additional information you request.

[Signed] H. N. Stroh

Sworn and subscribed to before me
this 19th day of May, 1944
Edith B. Laylander (signed)
Notary Public

(SEAL)
State of Pennsylvania
County of Allegheny

EDITH B. LAYLANDER, Notary Public

My Commission Expires
March 5, 1945

Defendant's Exhibit A

[18] Affidavit of Virginia K. Welch

TO WHOM IT MAY CONCERN:— This is to certify that I have known William Murray Estep for the past eleven years and am in a position to be familiar with his activities during that time. He was raised in a Christian family and began his activity as a Minister of Jehovah's Witnesses in 1936. In October, 1941 he became a full-time Minister and since then has devoted all of his time to the preaching of the gospel by calling on the public from door to door with Bible instruction in printed form and by conducting Bible study classes in the homes of those desiring this service. He is looked upon by those attending these studies as well as by members of Jehovah's Witnesses as an Ordained Minister.

Signed:— Virginia K. Welch

Sworn and subscribed to before me
this 16th day of May, A. D. 1944
Raymond E. Switzer (signed)
(SEAL)

RAYMOND E. SWITZER,
Notary Public

My Commission Expires
January 5th, 1947

[19] "Petition signed by fourteen"

TO WHOM IT MAY CONCERN:

WE, THE UNDERSIGNED, ARE PERSONALLY ACQUAINTED WITH WILLIAM M. ESTEP. HE WAS DULY APPOINTED BY THE WATCHTOWER BIBLE & TRACT SOCIETY TO BE THE ADVERTISING SERVANT (ASSISTING THE MINISTER IN CHARGE) OF THE WASHINGTON, PENNSYLVANIA COMPANY OF JEHOVAH'S WITNESSES AND FAITHFULLY SERVED IN THAT CAPACITY UNTIL THE FALL OF 1943, AT WHICH TIME HE TRANSFERRED TO ANOTHER LOCALITY. HE IS ENGAGED IN PIONEER OR FULL-TIME MINISTERIAL WORK AND WE RECOGNIZE HIM AS AN ORDAINED MINISTER.

NAME	ADDRESS
Earl Ferree	787 East R. R. St., Monongahela, Pa.
R. L. Murray	Glenn St., R. D. 1, Washington, Pa.
Wm. H. Saunders	48 Erie St., Washington, Pa.
Mittie Taylor	124 N. Lincoln St., Washington, Pa.
Idella Saunders	48 Erie Street, Washington, Pa.
Agnes L. Ferree	787 East R. R. St., Monongahela, Pa.
Madalena Florida	120 Grove Ave., Washington, Pa.
Irene Hoover	R. D. No. 4, Washington, Pa.
Irene Dugan	R. D. 4, Washington, Pa.
Nellie Murray	R. D. 2, Washington, Pa.
Mrs. R. L. Murray	Glenn St., R. D. No. 1, Washington, Pa.
Anderson W. Dilliard	970 Chartiers St., Washington, Pa.
Rachel Dilliard	970 Chartiers St., Washington, Pa.
Mrs. E. E. Dye	R. D. 4, Washington, Pa.

Defendant's Exhibit B

[Admitted in Evidence]

[Page 3]

Occupational Questionnaire

Showing Ministry

[Excerpts from Defendant's D. S. S. Form 311]

[Postmarked:] CANONSBURG PA. Aug 13 1942 8 P.M.

From: Selective Service System
Local Board No. 4
Washington County
State Armory
Canonsburg, Pa.

Mailed to: *Estep, William Murray*
195 Summit Ave.
Canonsburg, Penna.

[When mailed by defendant to Local Board No. 4, postmarked:] CANONSBURG PA. AUG 20 1942 10 AM

6. Social Security Number: *192-18-8119*
7. Date of Birth: *August 9 1922*
8. Race: *White*
9. Citizenship: *Citizen or National of United States* [*x*]
10. Marital status: *Single* [*x*]
14. Education: Grammar school, completed grade *8* Graduate? *Yes*
    High school, completed grade *4* Graduate? *Yes*
15. Present work status: [*x*] Am now working full time or part time, or worked during past 7 days
16. Employment class in present job: [*x*] An independent worker, working for yourself, not hired by anyone, and not hiring help.
18. Title of present job: *Minister*

19. Length of experience at this type of work: *11* months Date began: *Oct. 1, 1941*

20. Duties of your present job: *Organizing and establishing churches and generally preaching the Gospel of the Kingdom of God.*

21. Product you work on or produce or service you perform: *Ministering*

23. Present employer: *self-employed* Address of place of work *195 Summit Ave.*
Canonsburg, Washington
County, Penna.

24. Title of job which you are best fitted: *Minister*

25. Length of experience at this type of work: *11* months Date began: *Oct. 1, 1941*

26. Is this job the same as your present job? [*x*] Yes.

28. Title of job for which you are next best fitted: *Mason's laborer*

29. Length of experience at this type of work: *6* months Date began: *April '41* Date ended: *Sept. '41.*

31. Duties of job for which you are next best fitted: *Supplying bricklayers with bricks and mortar and also mixing mortar.*

[Page 4]

35. Other occupations: List here any jobs or fields of work not reported in item 34 or on page 2, in which you have had experience or training (*1*) *Minister* (*2*) *Mason's laborer.*

Defendant's Exhibit C

[Identified only, not admitted in evidence]

Certificate of Ministerial Status

WATCHTOWER
BIBLE AND TRACT SOCIETY
Incorporated

SD-SS Dec. 24, 1941

TO WHOM IT MAY CONCERN.

This is to certify that William Murray Estep has been associated with the Watchtower Bible & Tract Society, Inc., according to our records, since 1935.

He was baptized in 1936 and was appointed direct representative of this organization to perform missionary and evangelistic service in organizing and establishing churches and generally preaching the Gospel of the Kingdom of God in definitely assigned territory on October 1, 1941.

Mr. Estep's entire time is devoted to missionary work. He has declared himself to be a follower of Christ Jesus and wholly consecrated to do the will of Almighty God. He has taken a course of study in the Bible and Bible helps prescribed by this Society and has shown himself apt to preach and teach "this Gospel of the Kingdom". Matthew 24:14.

He has the Scriptural ordination to preach "this Gospel of the Kingdom". Isaiah 61:1, 2; Isaiah 52:7. He is, therefore, declared by this Society a duly ordained minister of

the Gospel and is authorized to represent the Society and preach "this Gospel of the Kingdom", proclaiming the name of Jehovah God and Christ Jesus his King.

Watchtower B: & T. Society, Inc. (signed)
H. H. Riemer (signed)
Asst. Secretary & Treasurer

T. J. Sullivan (signed)
Superintendent of Evangelists

Subscribed and sworn to before me this 24th day of December 1941.

William K. Jackson (signed)
Notary Public Kings County
Kings Co. Clks. No. 73, Reg. No. 3005
Commission expires March 30, 1943.

Defendant's Exhibit D

[Identified only, not admitted in evidence]

Request for Hearing, with Documents

195 Summit Avenue
Canonsburg, Pa.
October 10, 1942

SELECTIVE SERVICE
Local Board No. 4
Washington County
State Armory
Canonsburg, Pa.

Gentlemen:

I have received notice that I have been classified 1-A. I wish to appeal from this classification, and ask that you reconsider.

Information in the form of a statement, an "Important Letter to Department of Justice" (contained in Consolation magazine No. 551), both of which were filed with my Questionnaire, together with the information in the Ques-

tionnaire itself, all prove that I am entitled to a 4-D classification as a minister. I therefore ask that you reconsider my present classification. This is in harmony with Section XXX, Paragraphs 385-388, Volume 3 of the Selective Service Regulations.

Enclosed herewith are copies of the following, which I wish to have made a part of my appeal:

A statement explaining my position as a Christian.

A copy of the certificate of my association with the Watchtower Bible and Tract Society as a minister.

An article "Jehovah's witnesses—Ordained Ministers" (Consolation magazine No. 569).

My name has been sent to Selective Service Headquarters to be added to the list contained in the last above named article. I ask that you make no disposition of my case until you find whether or not my name has been accepted for this list.

I also wish to appear before the board personally to further state my position, and ask that the board set a date for such hearing and notify me of such.

Very truly yours,
William Murray Estep
(Order No. 11918)

Defendant's Exhibit E

[Admitted in Evidence]

Conscientious Objector's Form Proving Ministerial Status

[Excerpts from defendant's D.S.S. Form 47]

Series I.—CLAIM FOR EXEMPTION

A. [Struck out.]

B. I claim the exemption provided by the Selective Training and Service Act of 1940 for conscientious objectors, because I am conscientiously opposed by reason of my

religious training and belief to participation in war in any form and to participation in any service which is under the direction of military authorities.

[s] William Murray Estep

Series II.—RELIGIOUS TRAINING AND BELIEFS

1. Describe the nature of your belief which is the basis of your claim made in Series I above.

I believe the attached statement will make this clear.

[Attached statement is as follows, to wit:]

Series IV—(e)

Creed of Jehovah's witnesses in relation to participation in war—quoted from the Bible:

2 Timothy 2: 3-4

"Thou therefore endure hardness, as a good soldier of Jesus Christ. No man that warreth entangleth himself with the affairs of this life; that he may please him who hath chosen him to be a soldier."

John 18: 36

"Jesus answered, My kingdom is not of this world: if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews; but now is my kingdom not from hence."

Ephesians 6: 12

"For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places."

Genesis 9: 6, 16

"Whoso sheddeth man's blood by man shall his blood be shed; for in the image of God made he man. And the bow shall be in the cloud; and I will look upon it, that I may remember the everlasting covenant between God and every living creature of all flesh that is upon the earth."

2 Corinthians 10: 3-5

"For though we walk in the flesh, we do not war after the flesh: (For the weapons of our warfare are not carnal, but mighty through God to the pulling down of strong holds;) Casting down imaginations, and every high thing that exalteth itself against the knowledge of God, and bringing into captivity every thought to the obedience of Christ."

2. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

I was born in and have been taught this faith since childhood. I have, myself, since 1935 studied the Bible with Bible helps published by the Watchtower Society.

3. Give the name and present address of the individual upon whom you rely most for religious guidance.

Watchtower Bible & Tract Society, 117 Adams Street, Brooklyn, New York.

4. Under what circumstances, if any, do you believe in the use of force?

I believe in the use of force in defense of my life and property and in defense of my family and fellow Christians, as set forth in the following scriptures: Nehemiah 4: 1-14; Exodus 22: 2.

5. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

I gave up secular work in the fall of 1941 and entered full time service as a minister of Jehovah God. I do this work by proclaiming the gospel of God's Kingdom from house to house and on the streets. (Isa. 61: 1, 2; Acts 20: 20; Prov. 1: 20) I feel a conspicuous demonstration of the depth of my religious convictions was made in 1935, when I was expelled from school and threatened with incarceration in a reformatory by the school authorities because I refused

to take part in a flag ceremony which, in my belief, would have put the State above God.

Series III.—GENERAL BACKGROUND

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (public, private, church, military, commercial, etc.).

Third Ward—Public—Canonsburg, Pa.—1928-1935

Gates Kingdom School—Private—Gates, Pa.—1935-1940

2. Give a chronological list of all occupations, positions, job, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged:

Mason's laborer—Surface Combustion Corp.—Headquarters unknown (work done at Pittsburgh) July 1941 to Sept. 1941

3. Give all addresses and dates of residence where you have formerly lived:

195 Summit Ave., Canonsburg, Pennsylvania 1922 to Date

4. Give the name, address, and country of birth of your parents and indicate whether they are living or not.

Elihu Burritt Estep, Canonsburg, Pa. (U.S.A.)—father living.

Bessie Virginia Murray Estep, Sedalia, Mo. (U.S.A.) mother—living.

Series IV.—PARTICIPATION IN ORGANIZATIONS

1. Have you ever been a member of any military organization or establishment? *No.*

2. Are you a member of a religious sect or organization? *Yes.*

(a) State the name of the sect, and the name and location of its governing body:

Jehovah's witnesses; Watchtower Bible & Tract Society, Inc. 117 Adams St., Brooklyn, N. Y.

(b) When, where, and how did you become a member of said organization?
I became one of Jehovah's witnesses in 1935 by publicly proclaiming the gospel of God's Kingdom and symbolized my consecration by water immersion in 1936, at Pittsburgh, Pa.

(c) State the name and location of the meeting you customarily attend:
Kingdom Hall, Washington Company of Jehovah's witnesses; 153 W. Chestnut St., Washington, Pa.

(d) Give the name and present address of the leader of such meeting:
Earl Ferree, Hazzard, Pa.

(e) Describe carefully the creed or official statements of said organization in relation to participation in war:
Please see attached statement. [Series IV—(e), *supra*]

3. Describe your relationships with other organizations:
None.

Series V.—REFERENCES

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war:

Name	Address	Occupation	Relationship
T. A. McKnight	1731 Parkfield, Pgh.	Employee of U. S. Post Office Pittsburgh	[McKnight] No relation—friend
Chas. H. Stewart, Jr.	317 Grace Ave., Pgh.	Accountant	[Stewart] No relation—friend
Robt. L. Murray	297 Glenn Ave., Washington, Pa.	Painter	[Murray] Cousin
R. W. Richardson	629 Oliver Bldg., Pgh.	Dist. Mgr.	[Richardson] No relation—friend

REGISTRANT'S AFFIDAVIT

State of Pennsylvania, County of Washington, ss:

I, William Murray Estep, do solemnly swear that I am the registrant described in the foregoing questions and answers, that I know the contents of my said answers, and that each and every statement of fact in my answers to said questions is true, to the best of my knowledge and belief.

[signed] William Murray Estep

Subscribed and sworn to before me this 13th day of October 1942.

[signed] Ruth E. Quay, Notary Public

Defendant's Exhibit F

[Identified only, not admitted in evidence]

Transcript of Hearing Before Local Board

SELECTIVE SERVICE SYSTEM
LOCAL BOARD NO. 4
Washington County 32
State Armory 125
Canonsburg, Penna. 004
(Stamp of Local Board)

CASE OF WILLIAM MURRAY ESTEP
TESTIMONY OF WILLIAM MURRAY ESTEP
(Shorthand Notes, October 21, 1942)
Order Number 11918

Mr. Reese:

Q You may present your case Mr. Estep.

A. The reason I asked for a hearing because I felt I have information which directly bears on my case. No doubt the constitution was framed by the men who foresaw the condition that exists now. I have a copy of a letter from Director Hershey which was filed at the time I filed my appeal. I believe this question was asked in volume III.

Mr. Davidson:

You have two claims filed here. Your lowest would be that of a minister and next as a conscientious objector. Which are you refering to?

A I am trying to make myself clear in being a minister. Therefore I filed the questionnaire for the conscientious objector for I had my signature under the second part but the information I am setting forth this evening has to set forth my claim as a minister.

Mr. Gullick:

Q What demonination do you belong to?

A I am a direct representative of the Jehovah's Witnesses and I am a duly ordained minister.

Q How long have you been ordained?
A October 1, 1942. I have been active in the service since 1935.

Mr. Reese:
Q Did you qualify to your questionnaire or did you affirm?
A It is really not important. I affirm to it.
Q Did you swear to it? A Yes.
Q In your questionnaire you stated you have been fully ordained on October 1, 1942. Is that true? You prepared this questionnaire in August before October 1, 1942.
A That is a miss type and it should be October 1, 1941.
Q That is a miss type and it should be typed 1941?
A That is right. In Volume III, Opinion No. 14, the question is asked, "May Jehovah's Witnesses be placed in Class IV-D as regular or duly ordained ministers of religion exempt from training and service?" The answer is, "The members of Jehovah's Witnesses who devote their time to the work of teaching the tenets of their religion and in the converting of others to their belief, and who enjoy the esteem of other Jehovah's Witnesses, and are each individually recorded as 'pioneers' by the Watchtower and Tract Society". There is being another list compiled in Washington D. C. and my name will be on that list.

Mr. Davidson:
Q When was your name placed on that list?
A It has been filed since October 1, 1942.
Q Was it filed after your questionnaire was returned?
A That is right because my age came up after I became a full time minister in the Jehovah's Witnesses.

Mr. Weiner:
Q Do you know if your name has been authorized to be on file? A I just stated those names are on file.
Q Do you have anything with you to varify that?
A No, I don't.

Q Where did you obtain that information that it has been filed?

A Through the Jehovah's council.

Q Do you have any letters or documents certifying that?

A No, I haven't.

Mr. Reese:

Q Do you administer any congregation or church building?

A Our work is carried on by preaching from house to house just as Christ preached to the Gospels. It is shown in the Books of Acts 20-20.

Q I just wanted to know if you assembled in large sums in a building to conduct your services and observe your rights according to your beliefs?

Mr. Davidson:

Q What would be your daily activities in your work?

A Well, as I stated, our work is to preach the God's Kingdom from house to house.

Mr. Reese:

Q Take last week and give us the itinerary. What did you do last week?

A I don't recall exactly.

Q Give us the high points of the activities?

A I just don't recall what I did do last week.

Q Do you recall what you did on Monday and Tuesday of last week?

A No, I don't recall.

Q On the 14th can you recall what you did?

A Not especially.

Q On the 15th, 16th, and 17th can you give us an outline of your itinerary?

A Starting on Monday, week before last, I was active in this work especially Monday, Tuesday, and Wednesday. I can't state exactly whether it was last week or the week before. My brother and I were active in the rural section of Washington.

Q What were your particular activities?
A We preached to the people.
Mr. Davidson:
Q How did you do that?
A By taking a phonagraph which we carry and play it in front of their door. The lecture is made by Judge Rutherford.
Q How many homes did you play that to?
A Two I believe that day.
Q Did you play that in the home or at the home?
A At the door step.
Q Did the people residing in these homes take any action toward asking you to continue playing or did they ask you to leave?
A They would show some interest when they listened to the lecture and would receive literature.
Q Did you hand them the literature?
A Yes, I did.
Q Did they take it graciously?
A No, they took it through the medium that they will receive some information.
Q Do you recall the names of the family that you visited?
A I don't know. In the case they do show particular interest we come back. The names are not very necessary.
Q Can you recall your activities on Thursday and Friday?
A I can't recall exactly.
Mr. Weiner:
Q Don't you have records of those that belong and support your creed?
A We know who they are. There is possibly such record in Washington.
Mr. Reese:
Q How are the ministers supported or maintained?
A It is up to them. They receive no fees or money.
Q Do you engage in other activities besides your ministrial activity?

A No, I don't.
Q How do you maintain or support yourself?
A The family sees to that. Naturally I have work to be done around the home. My whole time is taken up with the work of the Jevoah Witnesses which I receive no contributions. The contributions received for the lectures and literature is returned in that we might receive more publications.
Q How do you maintain yourself with food?
A My father is working. He is one of the Jehovah's Witnesses but he sees that we are properly clothes. It is not a matter of the Jehovah Witness that they are going to receive wealth or fine clothes but we have a knowledge that if we devote our time to the Almighty God, He will see to it that we will clothed and feed.
Q I am not speaking of fine clothes but of mere food. Do you understand that you are dependent upon your father in that respect? Suppose you had no father that would not be working, where would you look then for subsistence?
A I wouldn't be able to answer that until the time arrives.
Q Now that your father is working at gainful wages, he sees that you won't go hungary?
A That is right.
Mr. Davidson:
Q What do you do on Saturday?
A Almost every Saturday I am in Washington from 2:30 to 3:30 in the afternoon and in Canonsburg from 7:30 to 8:30.
Q Do you give the literature free of charge?
A We receive a small contribution. If a person wishes to obtain a copy and he doesn't have the money, we see that he gets one.
Mr. Reese:
Q What about the rest of the day besides the two hours that you spent on the corner?

A Our activities is to engage from house to house preaching the Gospel. Last Saturday I did not engage in house to house witnesses. Friday evening, that is the Friday preceeding this Saturday, from 7 to 9:30, I called at the home of Mrs. Marth in the rural part of Washington. I played a recording lecture of Judge Rutherford which answers various Bible questions which she was not quite familiar with.

Q Were those scriptures from the Bible?

A Yes, they were.

Q What is the difference of being a member of the Bethel family and a pioneer?

A A Pioneer is one who takes a 150 hours a month to the preaching of the Gospel. A member of the Bethel are the ones who engage in the publication of the Gospel.

Mr. Weiner:

Q Do you qualify in being a pioneer?

A Yes.

Q You have no documents here to show that you qualify?

A No.

Q Can you obtain such evidence?

A I have made a written request to the General Council, Mr. Hayden and he said my name has been put on the list.

Mr. Davidson:

Q Your work is to carry the lectures and play them through phonagraphic records?

A Yes.

Q Your work in your organization is for men to carry phonagraph lectures of your latest leaders and then you distribute literature?

A When you speak of a leader, to you mean Judge Rutherford or a leader of Christ?

Q Do you carry Judge Rutherford's lectures on the phonagraph?

A Yes.

Q Have you preached sermons to groups?
A No, not what you would call sermons.
Q Does your group hold meetins at your homes?
A We hold meetings at some homes and in Washington every Wednesday and Sunday evenings from 8 to 9.
Q Do you have round table talks at these meetings?
A All members are asked to participate in these meetings, others are asked to make comments.

Mr. Gullick:

Q Is it not true that all the members of your society are confined to the teaching of Judge Rutherford?
A No, we are teaching the belief of Judge Rutherford like anyother organization believes the teaching of anyother man.
Q Your conception is based on that.
A It is based on the Bible.
Q In your study of the Bible, do you study the records and then the Bible?
A We study the Tract and then the Bible.
Q When is your general meeting when you get all together as a society?
A Wednesday and Sunday.
Q Who is the leading man?
A We have what is called a chairman that takes care of the meeting.
Q If he is absent and you being an ordained minister, do you take his place?
A I have taken part in the meeting.
Q Do you take his place as the leading man?
A I haven't recalled of him ever being absent.
Q You don't want to go to the army.
A No, that isn't it at all. I have sufficient proof that I am a minister and I agreed to spend full time to preach the Gospel of the Kingdom.

Mr. Davidson:

Q Have you preached to individuals or groups?

A. In this locality during the month of May, I went to the homes on College Street to Pitt and and Jefferson Avenue, and one side of Greenside Avenue. I covered every home in this territory. I played phonograph records where it was possible. I told them I had a brief sermon and if they wished I would play it for them. I then left them literature free of charge. I also covered homes in Washington on Summerly, Maple, Arch, and another street which I do not recall the name. I preached to these people just in the manner that I outlined.

Mr. Reese:

Q You are an active member of the Jehovah Witnesses. Will you give us the number of Jehovah Witnesses that live in Washington County?

A I couldn't give you the number.

Q Could you give the number of Pioneers in Washington County?

A I have no idea.

Q Are there any in Washington?

A In the city of Washington, my three brothers and myself are registered as Pioneers.

Q Are there some in Finleyville?

A Perhaps there is. I believe there are upwards to six thousand in the United States.

Q You can't give me any figures as to the number of Jehovah Witnesses in Washington County?

A You see the organization of Jehovah Witnesses, the smaller organizations have what we call companies. There are I believe 75 associates with the Washington company of Jehovah Witnesses.

Q Do they all have their seat in Washington County?

A Yes.

Q What is the average membership of one of them?

A At the meetings which are held, there are 35 to 30 in attendance.

Q The Pioneers in this district are your three brothers

and yourself?

A That is true and there are others in the county but I wouldn't be able to name them.

Mr. Davidson:

Q What are the qualifications to become a pioneer?

A 150 hours must be spent to the preaching of the Gospel to the homes a month.

Q You preach the Gospel from house to house and you stand on the corner for about two hours on Saturday. Should an individual show interest in the organization, what stages would he pass through?

A That would be up to the director. I can state a circle how a person who shows interest in the Jehovah Witnesses goes. If we meet somebody in our door to door campaign we would come back and play a record lecture and give them literature in conjuction to the Bible. We also invite them to the meetings. In the event they wish to participate in the work, they would be invited to go with some individual to go from house to house. In the due course of time, if they give full time to that work, they would become a Pioneer. They are doing the work of national defense because they are tell the people to look forward to establish the Kingdom of God on earth.

Q Suppose some individual have become interested in your work, would it be possible to cut the time for him to become a Pioneer?

A I couldn't say. It would be up to the Watchtower Tract Society, 117 Adams Street, Brooklyn, New York. My chief thought in requesting this appearance before the Board is that I might state that I am registered in Washington with the list of Pioneers or a full time preacher of the Jehovah Witnesses and under the terms of the law, I am entitled to a 4-D classification.

Q Under the Selective Service Act it states that you may be put in Class 4-D but you may express an opinion.

Mr. Reese:

Q You must devote 150 hours a month in order to hold you job.

A Yes.

Q That is five hours a day. What do you do with the nineteen hours of the day? There are eight hours that are not accounted for. What do you do in the eight hours?

A There are certain preparations to be made in order to get ready for this job. You must see that you have a good supply of the Watchtower publications to take with your work and to see about the similar supplies which must be attended to the same as anyone else.

Mr. Gullick:

Q Couldn't you preach the Gospel if you were inducted into the army?

A In the army you are restricted to the military work.

Q They are asking for Chaplains for the army.

A You seem to forget that the Jehovah Witnesses is not very well thought of.

Q No, I didn't say that. If we lose this wary you will have no Jehovah Witnesses.

Mr. Weiner:

Q How old are you?

A 20.

Q Have you engaged in this work since you were fourteen?

A Yes.

Q Prior to this, did you belong to any other demonination?

A No, I did not.

Q Do you proclaim that you are a minister?

A Yes.

Q Did they hold any ceremonial rights when you became ordained?

A You receive your ordination by performing the work of Heavenly faith.

Q You are claiming to be put in 4-D classification being a fully ordained minister and that you perform the work?
A Yes.
Q Who determined your classification for the ordination?
A The society asks for references from certain members of the Jehovah Witnesses.
Q What organization approves your ordination?
A The names are listed on my ordination paper.
Q You made an agreement to devote 150 hours or more to the work of the Jehovah Witness.
A Yes.
Q What if you fail to devote 150 hours, will your name be removed from the list of Pioneers?
A It might be taken from the list.
Q By what method do they determine whether or not you have performed the work?
A By a monthly report.
Q You say you do not have to be fully ordained to be a minister of God?
A No, but I have sufficient proof that I am a fully ordained minister.
Q Is there any ceremonial rites that you went through other than an issuance of a letter?
A No, I didn't. I am a Pioneer or a full time minister and they will check up my record.
Q Is there any rite or ceremony that is practiced in the church.
A There are no rites or ceremony which we perform.
Q What are you doctrines?
A We place our entire belief and faith on the Bible. We have no particular rituals that we go through.

Mr. Davidson:

Q By doctrines we mean the interception of the Bible. Do you mean that?
A I have outlines as best as I could the duties.
Q Is there anything else you wish to state to the Board

before you leave?

A No.

Mr. Reese:

Q In your industrial occupational questionnaire, I note you gave your occupation as a minister and that the duties are to organize and establish churches and generally preaching the Gospel of the Kingdom of God. Did you establish any churches since August 1st?

A No.

Q Did you work as a mason's laborer?

A Yes, up to October 1st.

Q What were your duties?

A Mason's laborer, with the Carnegie-Illinois Steel Corporation.

Q Why did you leave this position?

A I left that job to devote full time to be a minister. I worked there for a couple of weeks.

Q Why didn't you continue?

A I wanted to engage full time in this work.

Defendant's Exhibit G

[Admitted in Evidence]

Letter of Local Board continuing Defendant's I-A Classification

SELECTIVE SERVICE SYSTEM

Local Board No. 4
Washington County 32
State Armory 125
Canonsburg, Penna. 004

(Stamp of Local Board)

October 22, 1942

William Murray Estep
195 Summit Ave.
Canonsburg, Pa.

Dear Sir:

You are advised that this board after carefully considering your case have refused you a change of classification as a minister.

You are therefore continued in Class I-A.

Yours very truly,

For the Board

(signed)

J. W. McNutt, Chief Clerk

Defendant's Exhibit H

[Admitted in Evidence]

Letter and Statement of Appeal and Letter of Board

195 Summit Avenue
Canonsburg, Pennsylvania
October 27, 1942.

Selective Service
Local Board No. 4
Washington County
State Armory
Canonsburg, Pennsylvania

Gentlemen:

I hereby file notice of appeal from classification 1-A to classification 4-D.

The following information has been filed with the Local Board:

"Important Letter to Department of Justice"
(Consolation No. 551)
"Jehovah's witnesses—Ordained Ministers"
(Consolation No. 569)
A Statement explaining my position as a minister
Photostatic copy of the certificate of my association with the Watchtower Bible and Tract Society as a minister.

Very truly yours,
William Murray Estep
(Order No. 11918)

(Sent by registered mail 10/27/42—
Registered Article No. 2232.
Return Receipt received—signed:
Local Board No. 4, Canonsburg, Pa.
Stella Butka (signed)
Date of delivery 10-28, 1942)

STATEMENT

In accordance with the provision set forth in the Selective Service Questionnaire, I submit the following information to more fully explain my position as one of Jehovah's witnesses in regard to combatant or non-combatant service.

Jehovah the Almighty God has in these days of world distress and turmoil provided a guide whereby all men of righteousness might receive his protection. This guide is the Bible and is, as stated at 2 Timothy 3:16, 17, "given by inspiration of God and is profitable for doctrine, for reproof, for correction, for instruction in righteousness: that the man of God may be perfect, throughly furnished unto all good works." (1 Peter 2:9)

In order for one to be a minister to the name of Jehovah, that person must set himself apart from worldly activities and take no sides in the wars or controversies of the nations. "For we wrestle not against flesh and blood but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places." (Eph. 6:12) also (John 15:19)

This does not mean that Jehovah's witnesses are pacifists, for Jesus himself stated at John 18:36: "Jesus answered, My kingdom is not of this world: If my kingdom were of this world then would my servants fight, that I should not be delivered to the Jews: but now is my kingdom not from hence."

Hence it is seen that Jehovah's witnesses today like the followers of Christ when he was yet on earth put their trust and hope of salvation in the kingdom of God for which the world has long prayed to be established: "Thy kingdom come. Thy will be done in earth, as it is in heaven." (Matt. 6:10) "Nevertheless we, according to his promise, look for a new heavens and a new earth, wherein dwelleth righteousness." (2 Peter 3:13)

In view of the facts hereinbefore cited, it would be im-

possible for a true Christian to involve himself in any way in a war between any nations at the present time. "No man that warreth entangleth himself with the affairs of this life; that he may please him who hath chosen him to be a soldier." (2 Tim. 2:4) In no way does the true Christian wish to hinder the activities nor break the laws of the nation wherein he is living. "Render unto Caesar the things which be Caesar's, and unto God the things which be God's." (Luke 20:25) But if the laws of men conflict in any way with the laws of God, then the Christian must follow God's law whatever the consequences. "We ought to obey God rather than men." (Acts 5:29).

As for myself, I have been raised in this faith and have been taught the Bible from my childhood. Furthermore, after leaving the public school at the eight grade, I attended the Kingdom School of Jehovah's witnesses for the next five years. I there received a special course in Bible training and study with the aid of Bible helps published by the Watchtower Society.

Since 1936 I have been active in proclaiming this Gospel of the Kingdom; and on October 1, 1941, I gave up my secular work that I might devote all my time and energy toward this end.

From the paragraphs above, you will necessarily conclude that it would be a violation of my covenant with my Creator and also a violation of my conscience to in any way support or help to prolong any war or controversy between any nations of this world.

For further information I refer you to the "Consolation" magazine No. 551, pages 24 to 30, inclusive; wherein is found a copy of a letter to the Department of Justice from the legal counsel of Jehovah's witnesses, concerning the stand which I have taken. I am enclosing a copy of the magazine with this statement, and ask that it be made a part thereof.

William Murray Estep (signed)

Letter of Local Board

SELECTIVE SERVICE SYSTEM

Local Board No. 4
Washington County 32
State Armory 125
Canonsburg, Penna. 004
(Stamp of Local Board)

October 30, 1942

William Murray Estep
195 Summit Ave.,
Canonsburg, Penna.

Dear Sir:

Your letter of appeal to the Board of Appeal received in this office October 28, 1942 was not signed by you.

You will call at this office at once and sign same so that it can be forwarded to the Appeal Board.

Yours very truly,

For the Board,

(signed)

J. W. McNutt, Chief Clerk

Defendant's Exhibit I

[Admitted in Evidence]

Defendant's Letter Returning Conscientious Objector's Form

[NOTE: This letter was in reply to a "Conscientious Objector" form which was received in the mail from the Local Board without explanation, and returned to them in blank.]

195 Summit Avenue, Canonsburg, Pennsylvania
February 22, 1944

SELECTIVE SERVICE
Local Board No. 4
Washington County
State Armory, Canonsburg, Pennsylvania

Gentlemen:

So far as I know my case is being considered by the Board of Appeal.

I do not wish to add anything further to my file at this time as the information it now contains fully explains my position as a minister and sets forth my request for a minister's classification; that is, a IV-D classification. Therefore I am returning D.S.S. Form 47, received from you, to you herewith in blank.

In no way should said information be taken to mean that I ask for a conscientious objector's classification, which is IV-E. I am certain that the local board is aware of this fact, as my answers to questions propounded to me by Mr. Reese (at a hearing before the local board on the night of October 21, 1942) showed clearly that my file asked for a minister's (IV-D) classification and *not* a conscientious objector's (IV-E) classification.

Very truly yours,
William Murray Estep
Order No. 11918

Defendant's Exhibit J

[Identified only, not admitted in evidence]

Anonymous Note with Newspaper Clipping

[This exhibit consists of an envelope bearing cancelled U S Postage 3c stamp; postmark CANONSBURG PA. DEC 2 1942 4 30 PM; addressed "Draft Board No 4 Canonsburg"; and on reverse side of envelope appears rubber-stamped the following:]

Local Board No. 4 32
Washington County 125
Dec-3 1942 004
State Armory
Canonsburg, Pa.

[Also, a card bearing the following unsigned handwriting:]

Whats the matter with our own Draft objectors - the Esteps are surely no different from the other boys.

[Reverse of card:]

Why arent they called - or won't they ever be?

■

[Also, attached to the card is a clipping from a newspaper, unidentified, with date of publication not appearing thereon, and reading *verbatim* as follows:]

FOUR DRAFT OBJECTORS GET PRISON TERMS

Jehovah's Witnesses Failed to Report To Camps

Four men, all of them members of the Jehovah's Witnesses sect, were sentenced to five-year penitentiary sentences in Federal court yesterday for failure to report at conscientious objectors' camps after having been classified as "C-O's" by their local draft boards.

One of them, Nick Falbo of North Belle Vernon, had delivered a long harangue to the court in support of his refusal even to perform the non-military tasks of a conscientious objector, and provoked Judge F. P. Schoonmaker into declaring:

"You had better go to some other country if you do not like the kind of government we have here." Once, during Falbo's remarks, the judge had interrupted to ask if the defendant admired the Japanese system.

Others Sentenced

Also sentenced by Judge Schoonmaker was Falbo's brother, Salvatore J. A third brother, Ralph Falbo, is listed to go on trial today on similar charges.

Judge R. M. Gibson sentenced the other two conscientious objectors yesterday, giving five-year sentences to Clyde Howard Stein of Arlington avenue and John Andrew Dobransky of Munhall.

A fifth man, Nicholas Haller of Carnegie, was given a five-year sentence by Judge Gibson for failure to report for army induction.

Defendant's Exhibit K

[Admitted in Evidence]

Order to Report Preinduction Physical Examination

SELECTIVE SERVICE SYSTEM

[DSS Form 215]

APR 19 1944

Local Board No. 4 32
Washington County 125
APR 19 1944 004
State Armory,
Canonsburg, Pa.
(Local Board Date Stamp With Code)

The President of the United States,

To *William Murray Estep 11918*

GREETING:

You are hereby directed to report for preinduction physical examination at *State Armory, Canonsburg, Pa.* at *7:00* A.m., on the *28th* of *April*, 1944.

J. W. McNutt

(Clerk of local Board)

Defendant's Exhibit L

[Admitted in Evidence]

Report of Physical Examination

[See Defendant's Exhibit S, Part 2, printed at page 237, infra.]

SELECTIVE SERVICE SYSTEM
CERTIFICATE OF FITNESS

Local Board No. 4 32
Washington County 125
MAR 28 1944 004
State Armory
Canonsburg, Penna.
(Local Board date with code)

William Murray Estep 11918 (Order No.)

Having been forwarded for preinduction physical examination and having been examined, I hereby certify that you have been found:

3. X Physically fit, acceptable by Navy, including Marine Corps, Coast Guard.

28 April 1944
(Date of examination)

Name F. H. Smedley (stamp signature)
Induction Station Commander.

Rank F. H. Smedley, 2d Lt, AGD
Ass' Rctg & Ind. Off.

Station Armed Forces Induction Station,
Pittsburgh, Pa.

DSS Form 218

Defendant's Exhibit M

[Admitted in evidence]

Individual Appeal Record

[DSS Form 66]

SELECTIVE SERVICE SYSTEM

Local Board No. 4 32
Washington County 125
JUL 28 1944 004
State Armory
Canonsburg, Pa.
(Local Board Date StampWith Code)

Name of registrant *William Murray Estep 11918*

The local board has determined that the address of this registrant's principal place of employment is *195 Summit Avenue, Canonsburg, Pennsylvania*

Classified by local board in Class *1-A* until ....., 194.

Date classified *October 3* 1942.

[*x*] Forwarded on appeal taken by *William Murray Estep, registrant.*

Date forwarded to board of appeal *July 28*, 1944.

Stella Butka
Asst. Clerk of Local Board.

Classified in Class *1 A* until ....., 194., by the following vote: Yes *4* No *0*

BOARD OF APPEAL AREA No. 8
AUG 2 1944
Court Square Arcade, Washington, Pa.

Frank E. Pireaux
Member of Board of Appeal

SELECTIVE SERVICE SYSTEM

LOCAL BOARD NO. 4
Washington County 32
State Armory 125
Canonsburg, Penna. 004
(Stamp of Local Board)
July 28, 1944

Board of Appeal Area No. 8
Judges Chamber - Orphans Court
Washington, Pa.

Re: William Murray Estep
Order Number 11918

Dear Sir:

The above named registrant was classified in Class 1-A by this Board for the following reasons:

Mr. Estep is not listed as a minister in any list yet submitted from National Headquarters of Selective Service.

Although this registrant is not gainfully employed and devotes his time to the ministry, he does not contribute enough hours to this work to be considered a full-time minister since he works only three days a week in that capacity, and is not justified to a 4-D classification.

This registrant is 21 years of age having been born August 9, 1922, and is also single.

Respectfully,
For the Board
Stella Butka
Assistant Clerk

SB

Defendant's Exhibit N

[Identified only, not admitted in evidence]

Handwritten Statement by Defendant

Local Board No. 4 32
Washington County 125
AUG 21 1944 004
State Armory
Canonsburg, Pa.

I, William Murray Estep, am a duly ordained minister of the gospel and since October 1st 1941 up to this time I regularly engage in the work of preaching this gospel of the kingdom from house to house and also conducting Bible studies in the homes of interested persons.

Since the aforementioned date I have been working as a 'pioneer' minister under the direction of the Watchtower Bible and Tract Society of Brooklyn New York and, in such capacity as a pioneer minister, I am required by the regulations of the Watchtower Society; and to which regulations I have agreed to conform; to put in a minimum of 150 hours per month in this preaching work.

This information as well as much other information directly bearing on this subject, is included in my file at local board no. 4. at Canonsburg, Pa.

Trusting that this satisfactorily answers your request, I am

Order No. 11918

Respectfully Yours
William Murray Estep

Defendant's Exhibit O

[Admitted in Evidence]

Local Board's Reply to and Letter by State Headquarters

August 22, 1944

Selective Service
Director for Pennsylvania
P. O. Box 92
Harrisburg, Pa.

Re: William Murray Estep
Order Number 11918
Refer to: k16.8-10

Dear Sir:

Enclosed find the complete file of the above named registrant as requested in your letter of August 10, 1944. The delay in acting on this case was through an oversight on the office force.

A statement was obtained from the registrant as to his precise activities as a Jehovah's Witness at the present time.

We trust this is satisfactory.

Respectfully,
For the Board
Assistant Clerk

sb

COMMONWEALTH OF PENNSYLVANIA
HEADQUARTERS FOR SELECTIVE SERVICE
Northwest Office Building
Harrisburg

In reply refer to
k16.8-10
August 10, 1944

T. M. Reese, Chairman
Local Board No. 4, Washington County
State Armory
Canonsburg, Pennsylvania
Re: WILLIAM M. ESTEP - Order No. 11918

Dear Mr. Reese:

We are returning the cover sheet of the above registrant. On August 2, 1944, the board of appeal affirmed your I-A classification of October 3, 1942.

In reviewing the cover sheet, it is noted that you placed the registrant in Class I-A on October 3, 1942, that you mailed a Notice of Classification to the registrant on October 3, 1942, that the registrant filed an appeal on October 10, 1942, but that you did not forward the cover sheet to the board of appeal until July 28, 1944. The only action taken in the meanwhile, was a hearing held by you on October 22, 1942, after which you affirmed the registrant's classification, and so notified him, and the registrant renewed his appeal.

The file also discloses that the file was apparently again brought to your attention by an anonymous letter received on December 3, 1942, but that no action was taken at that time. On February 22, 1944, the registrant wrote you that "so far as I know my case is being considered by the board of appeal." It would appear that this letter should have brought the cover sheet to your attention. No further action was taken, however, until April 19, 1944, when the registrant was sent for preinduction examination. He was exam-

ined on April 28, 1944, found qualified for general military service, and mailed a Form 218 on May 5, 1944. Another considerable period of delay took place for the cover sheet was not sent to the board of appeal until July 28, 1944.

We would appreciate being advised as to the reasons for delay in acting on this case, and your returning the cover sheet to us with your letter of explanation. When you return the cover sheet, please obtain from the registrant a statement as to his precise activities as a Jehovah's Witness at this time, including the amount of time he now devotes, and his official title in that organization.

For the State Director:
SEYMOUR SHERIFF
Legal Advisor

Encls. n/c

Local Board No. 4 32
Washington County 125
AUG 14 1944 004
State Armory
Canonsburg, Pa.

Defendant's Exhibit P

[Admitted in Evidence]

Letter by State Headquarters

COMMONWEALTH OF PENNSYLVANIA
HEADQUARTERS FOR SELECTIVE SERVICE
Northwest Office Building
Harrisburg

In reply refer to
j:12.8-25
25 August 1944

Mr. T. M. Reese, Chairman
Local Board No. 4, Washington County
State Armory, Canonsburg, Pennsylvania
Re: William Murray Estep
Order Number 11918

Dear Mr. Reese:

After reviewing the file of the above named registrant it is apparent that there has been considerable irregularity in the handling of this case, and we are disturbed by the inadequacy of the explanation as offered in the letter which accompanied the file as submitted for the Board by Stella Butka, Assistant Clerk.

We are now particularly concerned in having the file perfected, and in having the case further processed in accordance with the obvious requirements, in that you complete the "Local Board Action on Receiving Decision of Board of Appeal" as set forth by SSR 627.31, and proceed to order the registrant for induction in accordance with Notice of Call, DSS Form 10, attached hereto.

The Cover Sheet is returned herewith, so that the case may have your immediate attention.

For the State Director
JOHN McI. SMITH
Colonel, JAGD
Deputy State Director

Attachments
DSS Form 10
File

Defendant's Exhibit Q

[Admitted in Evidence]

Defendant's Request for Stay of Induction

195 Summit Avenue
Canonsburg, Pennsylvania
August 30, 1944

Local Board No. 4
Washington County
State Armory
Canonsburg, Pennsylvania

Gentlemen:

Notice of Classification dated August 28, 1944 advising of my classification in I-A received.

I am asking the State and National Directors to review my case with the request that I be given the proper classification of IV-D, and would ask that you delay induction until they have had opportunity to review my file.

Very truly yours,
William M. Estep
Order No. 11918

■

195 Summit Avenue
Canonsburg, Pennsylvania
August 31, 1944

State Director of Selective Service
Harrisburg, Pennsylvania

Dear Sir:

Local Board No. 4, Washington County, Canonsburg, Pennsylvania, has classified me in Class I-A and has been upheld by the Appeal Board, Notice of Classification dated August 28, 1944 stating that I have been continued in Class I-A. In refusing to place me in Class IV-D as a regular and

duly ordained minister, the Local and Appeal Boards have been arbitrary, unfair and discriminative. I ask that you review my Selective Service file and take an appeal in my behalf, and in this regard call your particular attention to Section XXVII, paragraph 371 (c), and Section XXVIII, paragraph 379 (a), of the Selective Service Regulations, Volume 3.

My letter of May 23, 1944 addressed to Local Board No. 4, and appealing from their classification of I-A, refers to certain papers in my Selective Service file, such as ministerial certificate from the Watchtower Bible & Tract Society; statement attached to my questionnaire; eleven (11) affidavits and petition signed by others of Jehovah's witnesses, all of which prove that 'I devote my life in the furtherance of the beliefs of Jehovah's Witnesses, perform functions which are normally performed by regular or duly ordained ministers of other religions, and am regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.'—See Part IV, No. 3, "Jehovah's Witnesses"—page 3 of National Headquarters' State Director Advice No. 213-B, issued June 7, 1944.

All the evidence shows conclusively that I should properly be placed in Class IV-D as a regular and duly ordained minister, and I ask that you take an appeal in my behalf in order to avoid an injustice.

Respectfully submitted,
William M. Estep
Order No. 11918

195 Summit Avenue, Canonsburg, Pennsylvania
August 31, 1944

The Director of Selective Service
National Headquarters, Selective Service System
21st and C Streets, N. W. Washington 25, D. C.

Dear Sir:

Local Board No. 4, Washington County, Canonsburg, Pennsylvania, has classified me in I-A, and under date of August 28, 1944 I was advised that the Board of Appeal has continued me in that classification.

I have been one of Jehovah's witnesses since 1935, and since the fall of 1941, following graduation from high school, I have engaged in full-time pioneer work, having enrolled for such pioneer ministry immediately following my 19th birthday. From then up to this present time, I have continued to devote all of my life in the furtherance of the belief of Jehovah's witnesses. My Selective Service file contains a ministerial certificate from the Watchtower Bible & Tract Society, and eleven (11) affidavits and a petition signed by others of Jehovah's witnesses, showing that I am recognized by the organization as one of their ordained ministers and am regarded by other Jehovah's witnesses as such minister. I have asked for classification in Class IV-D because I meet the requirements for this classification as set forth in the Selective Service Regulations and as further clarified in State Director Advice No. 213-B, issued by your office on June 7, 1944, and because I cannot violate my covenant with Almighty God to devote my life in preaching the gospel of the Kingdom.

In view of the above, therefore, I respectfully request that you review my file and take an appeal in my behalf, and that any induction process be suspended pending this review.

Respectfully submitted,
William M. Estep Order No. 11918

Defendant's Exhibit R

[Admitted in Evidence]

Letter of Local Board Refusing Stay

SELECTIVE SERVICE SYSTEM

Local Board No. 4

Washington County 32

State Armory 125

Canonsburg, Penna. 004

(Stamp of Local Board)

September 6, 1944

William Murray Estep
195 Summit Ave.
Canonsburg, Pa.

Dear Sir:

You have been ordered for induction; there will be no delay.

Respectfully,
For the Board
(signed)
J. W. McNutt, Chief Clerk

[Part of Defendant's Exhibit R]

COMMONWEALTH OF PENNSYLVANIA
HEADQUARTERS FOR SELECTIVE SERVICE
Northwest Office Building
Harrisburg

In reply refer to
k16. 9-4
September 4, 1944

Mr. William M. Estep
195 Summit Avenue
Canonsburg, Pennsylvania

Dear Sir:

Replying to your letter of August 31, 1944, your case was carefully reviewed at this Headquarters after the board of appeal rendered its decision, and it was then determined that no action on our part would be justified.

We have carefully considered your letter of August 31, 1944, and still do not deem any action on our part justified in your case.

For the State Director:

(signed)
SEYMOUR SHERIFF
Legal Advisor

Defendant's Exhibit S

[PART 1]

[Admitted in Evidence]

[Excerpts from defendant's DSS Form 221]

[Page 1]

U. S. NAVAL FORCES

Report of Physical Examination and Induction

Local Board No. 4 32
Washington County 125
SEP 11 1944 004
State Armory
Canonsburg, Pa. & 90
Armed Forces Serial No. SV-6 USNR

Section I.—GENERAL (Local board will prepare from latest information available).

1. Name *ESTEP, WILLIAM MURRAY*
2. Present address *195 Summit Ave., Canonsburg, Washington [County], Penna.*
3. Registrant's order No. *11918*
4. Social Security No. *192-18-8119*
5. Marital status: Single [*x*]
7. Birthdate of registrant *8 9 22* [August 9, 1922]
8. Birthplace of registrant *Canonsburg, Pennsylvania, U. S. A.*
9. Race: White [*x*]
10. Citizenship: (a) United States citizen: Yes [*x*]
11. Court record: (a) Convicted of a crime other than minor traffic violation: No [*x*]
12. United States military service: (a) Previous service: None [*x*]

13. Education: (Number of years completed) Elementary school *8* High school *4*

14. Occupation and industry: (a) Title and duties of present job: *Minister-Perform Missionary and Evangelical services/in organizing churches.*
(b) Length of experience: Months *Unknown*
(c) Business of present employer *Missionary work*

15. Employment class (present job): Independent worker [*x*]

16. (a) Number of times previously sent to Induction Station *None*

[Page 2]

Section II.—LOCAL BOARD EXAMINATION AND CLASSIFICATION

20. (c) This local board has classified the above-named registrant in Class *1-A*
(d) Signature of member of local board *W. A. Manon*
(e) Place *Canonsburg, Penna.* (f) Date *10-3-42*

Section III.—MISCELLANEOUS (To be filled out at induction station for only those registrants accepted for military service).

21. (c) Religious preference (voluntary for Army) *Jehovah's witness*

22. (a) Nearest relative (other than wife or minor child) *Bessie Estep*
(b) Relationship *mother*
(c) Address *195 Summit Ave., Canonsburg, Pa.*

24. (a) Signature of registrant *William Murray Estep*
(b) Witnessed at *Pittsburgh, Pa.* on *12 Sept. 1944*
(Signature of witness attesting) *A. B. McDonald*

[Page 4]

Section IV.—PHYSICAL AND MENTAL EXAMINATION

68. (a) I CERTIFY that the above-named registrant was carefully examined, physically and mentally, that the results of the examination have been carefully recorded on this form, and that, to the best of my knowledge and belief, he is—

(1) Qualified for general military service [*x*]

(b) Signature of medical examiner [signed] *D. C. Muir DONALD C. MUIR 12 Sept. 1944*

(c) Name typed or stamped *D. C. MUIR*

(d) Title *LT. (MC) USNR*

Section V.—DISPOSITION OF REGISTRANT BY ARMED FORCES.

ARMED FORCES IND. STA., PBG., PA.

69. Type of examination: Regular induction [*x*]

70. Registrant's service preference: Navy [*x*]

Defendant's Exhibit S

[PART 2]

[Admitted in Evidence]

[Excerpts from defendant's DSS Form 221]

[Page 1]

NAVY

Report of Physical Examination and Induction

Local Board No. 4 32
Washington County 125
APR 28 1944 004
State Armory
Canonsburg, Pa.

Section I.—GENERAL (Local board will prepare from latest information available).

1. Name *ESTEP, William Murray*
2. Present address *195 Summit Ave., Canonsburg, Washington [County], Penna.*
3. Registrant's order No. *11918*
4. Social Security No. *192-18-8119*
5. Marital status: Single [*x*]
7. Birthdate of registrant *8 9 22* [August 9 1922]
8. Birthplace of registrant *Canonsburg, Pennsylvania, U. S. A.*
9. Race: White [*x*]
10. Citizenship: (a) United States citizen: Yes [*x*]
11. Court record: (a) Convicted of a crime other than minor traffic violation: No [*x*]
12. United States military service: (a) Previous service: None [*x*]
13. Education: (Number of years completed) Elementary school *8* High school *4*

14. Occupation and industry (a) Title and duties of present job *Minister—perform missionary and evangelistic service in organizing churches.*
    (b) Length of experience: Months *Unknown*
    (c) Business of present employer *Missionary work.*
15. Employment class (present job): Independent worker [*x*]
16. (a) Number of times previously sent to Induction Station *None*

[Page 2]

Section II.—LOCAL BOARD EXAMINATION AND CLASSIFICATION.

20. (c) This local board has classified the above-named registrant in Class *1-A*
    (d) Signature of member of local board *W. A. Manon*
    (e) Place *Cunonsburg, Penna.* (f) Date *10-3-42*

[Page 4]

Section IV.—PHYSICAL AND MENTAL EXAMINATION.

68. (a) I CERTIFY that the above-named registrant was carefully examined, physically and mentally, that the results of the examination have been carefully recorded on this form, and that, to the best of my knowledge and belief, he is—
    (1) Qualified for general military service [*x*]
    (b) Signature of medical examiner *James L. Waldock*
    (c) Name typed or stamped *JAMES L. WALDOCK*
    28 April 1944
    (d) Title *MAJOR, M. C., FLIGHT SURG.*

Section V.—DISPOSITION OF REGISTRANT BY ARMED FORCES. *ARMED FORCES IND. STA., PGH., PA.*

69. Type of examination: preinduction [*x*]
70. Registrant's service preference: None [*x*]

Defendant's Exhibit T

[Admitted in Evidence]

Defendant's Letter Explaining Purpose of Reporting

William Murray Estep
Order No. 11918
September 11, 1944

Local Board No. 4
Washington County
State Armory
Canonsburg, Pennsylvania

To Officer in Charge, Induction Station:

I am reporting to this induction center because I am required by law and by the decision of the Supreme Court to so report.

I am a duly ordained minister of the gospel (Isaiah 61: 1, 2) and I respect and obey all the laws of the United States that are in harmony with the laws of God as set forth in the Bible (Matthew 22: 21), and that do not require me to give up the ministry. (1 Corinthians 9: 14, 16)

> "The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek . . . to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61: 1, 2.
>
> "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's." —Matthew 22: 21.
>
> "Even so hath the Lord ordained, that they which preach the gospel should live of the gospel. For though I preach the gospel, I have nothing to glory of: for necessity is laid upon me; yea, woe is unto me, if I preach not the gospel!"—1 Corinthians 9: 14, 16.

The undenied evidence before the board conclusively proved that at all times I showed myself to be a regular or duly ordained minister of religion, and by the Act of Congress I am therefore exempt from military training and service. The board violated the Act of Congress by refusing me exemption, and the board and Naval authorities have not the authority to require me to submit to induction.

Since the Supreme Court has said that the military authorities cannot forcibly induct me, I ask the Commanding Officer to release me after I have complied with all orders of the induction station up to submission to actual induction in order that I might make my defense in Federal Court.

Respectfully,
William Murray Estep

cc Local Board No. 4

Defendant's Exhibit U

[Admitted in Evidence]

Letter of Recruiting Station Reporting Refusal to Submit to Induction

U. S. NAVY RECRUITING STATION
Old Federal Building, 300 Smithfield Street
Pittsburgh, Pennsylvania

NL41/P14-4/P20-2/10/sbs 12 September 1944.

From: Officer in Charge.

To: United States Attorney, New Post Office Building, Pittsburgh, Pennsylvania.

Subj: ESTEP, William Murray, Order No. 11918, LB4, Washington County, State Armory, Canonsburg, Pa. - notification of refusal to submit to induction.

1. The subject named man was assigned to the Navy and reported for Induction on 12 September 1944 and refused to submit to induction into the United States Navy. He was

called aside and in the presence of E. B. KECKLER, Lt. Cdr., USNR, the Officer in Charge, and C.R. NICHOLS, Lt. (jg) USN (Ret), E. V. SAVUKAS, CY, USNR and E. L. TISSUE, CEM, USN, again refused to submit to induction and was informed that such refusal constitutes a felony under the provisions of the Selective Training and Service Act of 1940, as ammended.

2. He was informed that conviction on such an offense by civil proceedings will subject him to be punished by imprisonment for not more than five (5) years or a fine of not more than $10,000, or both.

3. Using the following language, he was again informed of the imminence of induction, quote "You are now about to be inducted into the United States Navy. You will take one step forward as your name is called and such a step will constitute your induction into the United States Navy", unquote. He refused to step forward upon his name being called.

4. The Officer in Charge requested the subject named man to make a voluntary signed statement in his own handwriting, such statement to read, quote "I refuse to be inducted into the United States Navy", unquote. Subject named man refused to sign such a statement.

5. In the discussion with William Murray ESTEP, he stated that he was a minister of Jehovah's Witness Church and that he filed an appeal with his local board, which appeal was submitted to the State Director, Selective Service System Headquarters, and after being reviewed by them, his appeal was rejected.

E. B. KECKLER
Lt. Cdr., USNR
Officer in Charge.

CC: StDir, SelSerSys, Hrbg, Pa.
LB4, St. Arm, Canonsburg, Pa.
Encl: (HW)

(A) Signed statement of men listed in paragraph one (1) above.

U. S. NAVY RECRUITING STATION
OLD POST OFFICE BUILDING
PITTSBURGH, PENNA.

12 September 1944.

STATEMENT

We, the undersigned, attached to the U. S. Navy Recruiting Station, Old Post Office Building, Pittsburgh, Pennsylvania, verify that William Murray ESTEP refused to submit to induction into the United States Navy, and refused to sign a voluntary statement in his own handwriting, quote, "I refuse to be inducted into the United States Navy", unquote.

E. B. KECKLER, Lt. Cdr., USNR. OinC

C. R. NICHOLS, Lt. (jg) USN (Ret)

E. V. SAVUKAS, CY, USNR.

E. L. TISSUE, CEM, USN.

ENCLOSURE (A)

Defendant's Exhibit W

[Admitted in Evidence]

Defendant's REGISTRATION CARD

[DSS Form 1]

[FRONT]

Serial Number *N 186* ORDER NUMBER *11918*

1. NAME *WILLIAM MURRAY ESTEP*
2. PLACE OF RESIDENCE *195 Summit Ave. CANONSBURG, WASH* [*County*] *PA.*
3. MAILING ADDRESS *Same*
4. TELEPHONE *Canonsburg 868 J*
5. AGE IN YEARS *19* DATE OF BIRTH *Aug 9 1922*
6. PLACE OF BIRTH *Canonsburg, Pa.*
7. NAME AND ADDRESS OF PERSON WHO WILL ALWAYS KNOW YOUR ADDRESS *Elihu Bert Estep, 195 Summit Ave. Canonsburg*
8. EMPLOYER'S NAME AND ADDRESS *Unemployed*

I AFFIRM THAT I HAVE VERIFIED ABOVE ANSWERS AND THAT THEY ARE TRUE.

Wm. M. Estep

[BACK]

I certify that my answers are true; that the person registered has read or has had read to him his own answers; that I have witnessed his signature or mark and that all of his answers of which I have knowledge are true, except as follows: *None to my knowledge*

Margaret Bock (Signature of registrar)

Registrar for Local Board *4 Wash* [County] *Pa.*

Date of registration *June 30, 1942*

LOCAL BOARD NO. 4
WASHINGTON COUNTY 32
State Armory 125
CANONSBURG, PENNA. 004

Defendant's Exhibit X

[Admitted in Evidence]

COVER SHEET
of Defendant's Selective Service File

[D.S.S. Form 53]

ORDER NO. *11918* SERIAL NO. *N-186*

Name *Estep, William Murray*

Address *195 Summit Ave. Canonsburg Wash.* [County] *Pa.*

Telephone *Canonsburg 868-J* Race *White*

COVER SHEET

Date of registration *JUN 30 1942*

Date of birth *8 9 1922* [August 9 1922]

Marital status (Enter "S" or "M") *S*

[Stamped:]

RECEIVED
AUG 23 1944
PENNSYLVANIA SELECTIVE
SERVICE HEADQUARTERS

[Stamped:]

RECEIVED
AUG 8-1944
PENNSYLVANIA SELECTIVE
SERVICE HEADQUARTERS

VOL. III OPINION NO. 14 (AMENDED)
NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM

SUBJECT: Ministerial Status of Jehovah's Witnesses

FACTS:

Jehovah's Witnesses claim exemption from training and service and classification in Class IV-D as duly ordained ministers of religion under section 5 (d), Selective Training and Service Act of 1940, as amended, and section 622.44, Selective Service Regulations, Second Edition, which read as follows:

Section 5 (d):

"Regular or duly ordained ministers of religion, and students who are preparing for the ministry in theological or divinity schools recognized as such for more than one year prior to the date of enactment of this Act, shall be exempt from training and service (but not from registration) under this Act."

Section 622.44:

"'*Class IV-D: Minister of religion or divinity student.* (a) In Class IV-D shall be placed any registrant who is a regular or duly ordained minister of religion or who is a student preparing for the ministry in a theological or divinity school which has been recognized as such for more than 1 year prior to the date of enactment of the Selective Training and Service Act (September 16, 1940).

"(b) A 'regular minister of religion' is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without

having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

"(c) A 'duly ordained minister of religion' is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies in public worship; and who customarily performs those duties."

Question.—May Jehovah's Witnesses be placed in Class IV-D as regular or duly ordained ministers of religion exempt from training and service?

Answer:

1. The Watchtower Bible and Tract Society, Inc., is incorporated under the laws of the State of New York for charitable, religious, and scientific purposes. The unincorporated body of persons known as Jehovah's Witnesses hold in common certain religious tenets and beliefs and recognize as their terrestrial governing organization the Watchtower Bible and Tract Society, Inc. By their adherence to the organization of this religious corporation, the unincorporated body of Jehovah's Witnesses are considered to constitute a recognized religious sect.

2. The unusual character of organization of Jehovah's Witnesses renders comparisons with recognized churches and religious organizations difficult. Certain members of Jehovah's Witnesses, by reason of the time which they devote, the dedication of their lives which they have made, the attitude of other Jehovah's Witnesses toward them, and the record kept of them and their work, are in a position where they may be recognized as having a standing in relation to the organization and the other members of Jehovah's

Witnesses similar to that occupied by regular or duly ordained ministers of other religions.

3. Members of the Bethel Family are those members of Jehovah's Witnesses who devote their full time and effort to the manufacture and production of books, pamphlets, and supplies for the religious benefit of Jehovah's Witnesses, the purpose of which is to present the beliefs of Jehovah's Witnesses and to convert others. For their religious services, the members of the group receive their subsistence and lodging and in addition a very modest monthly allowance. This group of individuals consists of the office and factory workers at 117 Adams Street, Brooklyn, New York, and workers in the executive offices at 124 Columbia Heights, Brooklyn, New York, and at the Farms. Pioneers of Jehovah's Witnesses are those members of Jehovah's Witnesses who devote all or substantially all of their time to the work of teaching the tenets of their religion and in the converting of others to their belief. A certified official list of members of the Bethel Family and pioneers is being transmitted to the State Directors of Selective Service by National Headquarters of the Selective Service System simultaneously with the release of this amended Opinion. The members of the Bethel Family and pioneers whose names appear upon such certified official list come within the purview of section 5 (d) of the Selective Training and Service Act of 1940, as amended, and they may be classified in Class IV-D. The status of members of the Bethel Family and pioneers whose names do not appear upon such certified official list shall be determined under the provisions of paragraph 5 of this Opinion.

4. The original paragraph 4 has been consolidated with paragraph 3 of this amended Opinion.

5. The members of Jehovah's Witnesses, known by the various names of members of the Bethel Family, pioneers, regional servants, zone servants, company servants, sound

servants, advertising servants, and back-call servants, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's Witnesses. The deference paid to these individuals by other members of Jehovah's Witnesses also varies in a great degree. It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions which are normally performed by regular or duly ordained ministers of other religions, and, finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.

6. In the case of Jehovah's Witnesses, as in the case of all other registrants who claim exemption as regular or duly ordained ministers, the local board shall place in the registrant's file a record of all facts entering into its determination for the reason that it is legally necessary that the record show the basis of the local board's decision.

LEWIS B. HERSHEY,
DIRECTOR

LBH/spd
Legal
November 2, 1942
Secs. 5(d), 622.44

DISTRIBUTION "A,B,C,D"

Judgment and Commitment

[Title omitted in printing]

On this 20th day of December 1944 came the United States Attorney, and the defendant William Murray Estep appearing in proper person, and by counsel, and

The defendant having been convicted on verdict of guilty of the offense charged in the indictment in the above-entitled cause, to wit:

Violation of Selective Training and Service Act of 1940 and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of five (5) years—no fine—no costs.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

[signed] F. P. SCHOONMAKER
United States District Judge

NOTICE OF AND GROUNDS FOR APPEAL

[Title of cause omitted in printing]

Name and address of appellant: William Murray Estep, 195 Summit Avenue, Canonsburg, Pennsylvania.

Name and address of appellant's attorney: Hayden C. Covington, 117 Adams Street, Brooklyn, New York.

The offense is alleged violation of Section 11 of the Selective Training and Service Act of 1940, as amended.

Date of judgment is December 20, 1944.

Brief description of the judgment or sentence: Five (5) years from December 20, 1944 in the custody of the Attorney General at such place as may be designated by the Attorney General.

Appellant is now in the custody of the United States Marshal for the Western District of Pennsylvania, at Pittsburgh.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Third Circuit from the judgment above-mentioned, on the grounds set forth below:

Grounds for Appeal

1. The court erred in refusing defendant-appellant the right to cross-examine the chairmen of the Selective Service local and appeal boards with respect to the classifications and the reasons for defendant's classification of I-A and denial as to claim for exemption as a minister of religion.

2. The court erred in overruling defendant's motion to quash the indictment.

3. The court erred in excluding written evidence filed with the local board and oral testimony offered by the defendant and his witnesses as to his activity and status as an ordained minister under Section 5 (d) of the Selective Training and Service Act, which evidence was offered for

the purpose of showing that the local board did not have jurisdiction to induct the defendant because he was exempt from training and service under the Act and which oral testimony was offered in addition to the Selective Service files because the district court was entitled to hear *de novo*, as well as hear on review, the question of whether or not the local board had jurisdiction to induct the defendant.

4. The court erred in excluding parts of the draft board file and the oral testimony offered by defendant as to his background for training as an ordained minister of the Gospel and his history as an ordained minister of religion and activity showing that he was entitled to Class IV-D under the Act and Regulations.

5. The court erred in failing and refusal to grant the defendant's motion for dismissal of the indictment, for a judgment of acquittal and for a directed verdict, because the undisputed evidence showed that the order to report for and submit to induction was void and illegal because made contrary to the Act and Regulations since the undisputed evidence showed that defendant was a minister of religion; and for other reasons set forth in the motion.

6. The court erred in refusing to give the jury the defendant's requested instructions numbers 1 to 28, inclusive.

7. The court erred in holding that the administrative *selective process* had not been completed by reason of defendant's failure and refusal to submit to induction, when the undisputed evidence showed that he reported for induction and exhausted his administrative remedies to the point of refusing to step forward and to take the oath, thereby qualifying him to a judicial review of his classification.

8. The court erred in charging the jury, over the objection and exception of defendant, that they could not consider the illegality of the classification by the draft boards and that the issue was confined to whether or not defendant

received the order and failed to submit to induction and that if the jury found that defendant received the order and failed to submit to induction it was their duty to convict.

9. The court erred in charging the jury that it could not consider whether or not the draft boards had erred in denying defendant his claim for exemption as an ordained minister and thereby the draft board did not have jurisdiction to order him to report for training and service.

10. The court erred in refusing to permit the jury to consider whether or not the order to submit to induction was illegal and void.

11. The court erred in overruling each of the objections and exceptions taken to the court's charge specifically pointing out the defects therein, record of which objections and exceptions is incorporated herein by reference as though copied at length herein.

12. The acts and conduct of the trial judge in charging the jury in the manner in which he did and in refusing to give the requested instructions constituted a denial of defendant's right to a trial by jury, was an instruction to the jury to find defendant guilty, and violated defendant's right to a fair and impartial judicial trial, all contrary to Article III of the Federal Constitution and the Fifth and Sixth Amendments thereto.

13. Because the verdict of the jury is contrary to the law and the evidence.

14. Because the record and undisputed evidence shows that defendant is not guilty as charged in the indictment.

15. Because the court erred in sentencing and entering judgment against defendant.

16. Because defendant had been illegally classified and the draft board's order was void.

17. Because defendant was a minister of religion, entirely exempt from training and service under the Act, of which fact the draft boards had due notice on his Question-

naire, and the boards were without jurisdiction to order or require any further act of him, or to exercise any authority over him.

18. For other grounds apparent upon the face of the record.

19. For other grounds to be subsequently assigned and set out in the Assignments of Error.

Assignments of Error

Now comes defendant-appellant, William Murray Estep, and assigns error upon the record of said cause and says that the following errors were committed by the trial court to the prejudice and injury of defendant-appellant, to wit:

1. The trial court erred in holding that defendant had not exhausted his administrative remedies by acceptance upon a physical examination and by refusing to submit to induction after reporting to armed forces for induction in the manner required by law.

2. The trial court erred in holding that defendant, in order to challenge the legality of his classification, was required to submit to induction, after completing the selective process, and that his only remedy was review by writ of habeas corpus after induction by the armed forces.

3. The trial court erred in overruling defendant's motion to quash the indictment, which motion is incorporated herein and made a part hereof as though copied at length herein.

4. The trial court erred in holding that defendant could not attack the legality of the draft boards' actions and could not offer evidence showing that the boards had exceeded authority and acted arbitrarily and capriciously, and in denying the jury the right to determine whether or not defendant was under no duty for training and service pursuant to the Selective Training and Service Act of 1940,

which conclusion of the trial court converted the Act and Regulations thereunder into a bill of attainder, contrary to Clause 3, Section 9 in Article I of the Federal Constitution.

5. The trial court erred in holding that defendant should be denied the right to judicial review of the illegal order of the local board in defense to the indictment because he failed to comply with said order by submitting to induction, which holding construed the Act and Regulations in such a manner as to deny defendant his liberty and rights without due process of law, contrary to the Fifth Amendment to the Federal Constitution.

6. The trial court erred in holding that defendant should be denied the right to judicial review of the illegal orders of the boards and the armed forces because he failed to comply with said orders by submitting to induction, which holding construed the Act and Regulations in such a manner as to deny defendant his right of trial by jury on all the elements of his guilt and whether or not he was under any duty, as that term is used in Section 11 of the Act, contrary to the Sixth Amendment to the Federal Constitution.

7. The trial court erred in construing the Act and Regulations so as to surrender the judicial powers and functions of the United States District Court to the draft boards of the Selective Service System.

8. The trial court erred in holding that defendant could not show in defense to the indictment that he was exempt from duty under the Act and Regulations because a Minister of Religion.

9. The trial court erred in holding that defendant must first be inducted as a condition precedent to obtaining a judicial review of the illegal action of the draft board and that he should be penalized by the denial of the defense for having failed to submit to induction as ordered by the board and the armed forces.

10. The trial court erred in denying defendant the right to cross-examine the Government witness McNutt, Clerk

of the local board concerning a conspiracy by said clerk and the members of the local board to deprive defendant of his rights under the Act and Regulations to an exempt classification by telling defendant a lie that his Cover Sheet was with the appeal board and that he could not file additional evidence when, as a matter of fact, his Cover Sheet was with the local board at the time defendant offered the evidence to the local board, and the local board knew that said file had not been forwarded to the appeal board, and thereafter withheld many affidavits from the consideration by the appeal board and the State and National Headquarters by refusing to file said evidence in defendant's Cover Sheet, then in possession of the local board; all of which action was illegal, depriving defendant of a full and fair hearing before the appeal board and denying his right to submit additional evidence, contrary to the Act, the Regulations and the due process clause of the Fifth Amendment to the Federal Constitution. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to pages 28 to 36 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

11. The trial court erred in excluding from the evidence testimony of the witness Reese, Chairman of the local board, on examination concerning process followed by the local board in considering defendant's case and defendant's activity as an ordained minister and acts of the board affecting his classification and ministerial status under the Act and Regulations, all of which excluded testimony shows that defendant was at all times a minister of religion; that he was at all times a duly authorized and recognized minister of the Watchtower Bible and Tract Society; that since 1941, one year before the filing of his Questionnaire, he was a duly full-time ordained minister of said Society; that he devoted all his time to the performance of missionary and evangelistic work as such minister; that he came

within the terms of the Act, the Regulations and National Headquarters Opinion No. 14, as amended, as a minister of religion; that the Watchtower Bible and Tract Society and Jehovah's witnesses are duly recognized religious organizations under the Act; that the board did not find that he was not recognized by the Watchtower Bible and Tract Society as a minister, did find that he was devoting substantially his full time to the performance of his missionary, evangelistic work, did find that he dedicated his entire life to the performance of his duties as a minister, did not find that he was not devoting his full time and he had not dedicated his entire life, found that he performed functions and ceremonies ordinarily performed by the orthodox clergy, did not find that he fictitiously or falsely claimed to be a minister, could not find anything in the Cover Sheet disputing defendant's claim, could not point out wherein defendant did not fit Opinion No. 14; if this witness had been permitted to testify, he would have shown that defendant was exempt as a minister of religion but was not properly classified as such, that there was no evidence before the board that he was not a minister, that the board had exceeded its authority, acted in excess of its jurisdiction, acted contrary to the Act, the rules and regulations, without any evidence to support its making the classification when it placed him in Class I-A, contrary to the greater weight of the evidence, and that there was no evidence according to classification regulations that defendant was liable for training and service under the Act, that one of the reasons the board did not classify the defendant in Class IV-D was because his name did not appear on the certified official list of Jehovah's witnesses' ministers promulgated by National Headquarters of Selective Service System filed with State Headquarters, which was an arbitrary reason contrary to law; and that the local board violated the Act and Regulations in dealing with his case. This error is more particularly described in the steno-

graphic report of the evidence and the proceedings, and reference is here made to pages 73 to 79 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

12. The trial court erred in excluding from the evidence testimony of the witness Pireaux, Chairman of the appeal board, on examination concerning process followed by the appeal board in considering defendant's case and defendant's activity as an ordained minister and acts of the board affecting his classification and ministerial status under the Act and Regulations, all of which excluded testimony shows that defendant was at all times a minister of religion; that he was at all times a duly authorized and recognized minister of the Watchtower Bible and Tract Society; that since 1941, one year before the filing of his Questionnaire, he was a duly full-time ordained minister of said Society; that he devoted all his time to the performance of missionary and evangelistic work as such minister; that he came within the terms of the Act, the Regulations and National Headquarters Opinion No. 14, as amended, as a minister of religion; that the Watchtower Bible and Tract Society and Jehovah's witnesses are duly recognized religious organizations under the Act; that the board did not find that he was not recognized by the Watchtower Bible and Tract Society as a minister, did find that he was devoting substantially his full time to the performance of his missionary, evangelistic work, did find that he dedicated his entire life to the performance of his duties as a minister, did not find that he was not devoting his full time and he had not dedicated his entire life, found that he performed functions and ceremonies ordinarily performed by the orthodox clergy, did not find that he fictitiously or falsely claimed to be a minister, could not find anything in the Cover Sheet disputing defendant's claim, could not point out wherein defendant did not fit Opinion No. 14; if this witness had been permitted to testify, he would have shown that defendant was

exempt as a minister of religion but was not properly classified as such, that there was no evidence before the board that he was not a minister, that the board had exceeded its authority, acted in excess of its jurisdiction, acted contrary to the Act, the rules and regulations, without any evidence to support its making the classification when it placed him in Class I-A, contrary to the greater weight of the evidence, and that there was no evidence according to classification regulations that defendant was liable for training and service under the Act, that one of the reasons the board did not classify defendant in Class IV-D was because his name did not appear on the certified official list of Jehovah's witnesses' ministers promulgated by National Headquarters of Selective Service System filed with State Headquarters, which was an arbitrary reason contrary to law; and that the appeal board had violated the Act and Regulations in dealing with his case; that at no time did the appeal board consider any of the affidavits submitted by defendant in the year 1942 and again in May 1944 relating to defendant's ministerial activity, all of which written affidavits were illegally excluded from defendant's Cover Sheet by the local board and illegally withheld from the appeal board by the local board; that if said evidence had been submitted with the draft board file, Cover Sheet, to the appeal board, further consideration and great weight would have been given to defendant's claim for classification as a minister and that it is likely that a different result would have been reached by the appeal board if such affidavits had been incorporated in and made a part of the defendant's Cover Sheet. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to pages 82 to 88 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

13. The trial court erred in excluding from evidence

defendant's Exhibit "A", which was defendant's letter of May 23, 1944, to the local board appealing classification, to which was attached an undated two-page statement of defendant; sheet marked "Series IV-(e)" originally filed with Special Form for Conscientious Objectors; certificate of ordination; copy of letter dated October 10, 1942 to local board asking for hearing; copy of letter of appeal to local board dated October 27, 1942; copy of local board's letter of October 22, 1942 to defendant, continuing him in Class I-A; defendant's affidavit dated October 17, 1942; Hessler affidavit dated October 13, 1942; Ferree affidavit dated October 13, 1942; Reese affidavit dated October 10, 1942; Stewart affidavit dated May 17, 1944; Cuppett affidavit dated May 16, 1944; Murray affidavit dated May 20, 1944; Singer affidavit dated May 16, 1944; Welch affidavit dated May 19, 1944; Stroh affidavit dated May 19, 1944; Dawson affidavit dated May 17, 1944; petition signed by 14 persons; copy of Consolation magazine No. 569, containing Opinion No. 14, National Headquarters, Selective Service System, regarding classification of Jehovah's witnesses. Part of this documentary evidence was duly offered to the local board to become a part of defendant's Cover Sheet in November 1942 but was illegally rejected by the local board contrary to the Regulations, and later all of such documentary evidence was mailed by registered mail to local board in May 1944, which was received by the local board prior to the forwarding of defendant's file to the appeal board and all of which evidence was unlawfully withheld from the appeal board and not incorporated in defendant's Cover Sheet, all of which action on the part of the local board constituted a violation of defendant's procedural rights, contrary to the Act, the Regulations and the due process clause of the Fifth Amendment to the Federal Constitution. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to pages 67 to 70 thereof, which is incorporated

herein and made a part hereof as though copied at length herein.

14. The trial court erred in excluding from evidence defendant's exhibit "C", which was certificate of ordination of defendant dated December 24, 1941, an undated 2-page statement of defendant and Consolation magazine No. 551, containing "Important Letter to the Department of Justice' concerning Jehovah's witnesses. This documentary evidence was duly filed with the local board and made a part of defendant's Cover Sheet, which showed that he was exempt as a minister, that the administrative agency exceeded its authority, acted in excess of its jurisdiction, acted contrary to the Act and Regulations, acted without any evidence to support its determination, acted contrary to the evidence, acted without substantial evidence and violation of defendant's rights under the Act, the Regulations and the due process clause of the Fifth Amendment to the Federal Constitution. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to pages 55 to 61 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

15. The trial court erred in excluding from evidence defendant's exhibit "D", which was defendant's letter dated October 10, 1942 to the local board asking for a hearing, to which was attached an undated 2-page statement of defendant, copy of certificate of ordination, and Consolation magazine No. 569, containing Opinion No. 14, National Headquarters, Selective Service System, regarding classification of Jehovah's witnesses. This documentary evidence was duly filed with the local board and made a part of defendant's Cover Sheet, which showed that he was exempt as a minister, that the administrative agency exceeded its authority, acted in excess of its jurisdiction, acted contrary to the Act and Regulations, acted without any evidence to support its determination, acted contrary to the

evidence, acted without substantial evidence and in violation of defendant's rights under the Act, the Regulations and the due process clause of the Fifth Amendment to the Federal Constitution. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to page 61 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

16. The trial court erred in excluding from evidence a 7-page stenographic transcript of the testimony given by defendant at his hearing before the local board on October 21, 1942, which was made a part of his Cover Sheet and draft board files and which showed that he was exempt as a minister, that the administrative agency exceeded its authority, acted in excess of its jurisdiction, acted contrary to the Act and Regulations, acted without any evidence to support its determination, acted contrary to the evidence, acted without substantial evidence and in violation of defendant's rights under the Act, the Regulations and the due process clause of the Fifth Amendment to the Federal Constitution. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to page 62 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

17. The trial court erred in excluding from evidence an anonymous card asking why Estep had not been treated in the same way as had been Nick Falbo by sentence to the penitentiary according to enclosed newspaper clipping to which was attached an envelope addressed to the local board postmarked December 2, 1942 in which the said card and newspaper clipping were mailed to the local board, which was offered for the purpose of showing that the defendant had been illegally dealt with by the local board and denied by and through prejudice his rights under the Act, the Regulations and the due process clause of the Fifth Amend-

ment to the Federal Constitution. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to page 63 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

18. The trial court erred in excluding from evidence a statement dated August 21, 1944, prepared at the office of the local board in longhand by defendant and filed with the local board in response to a letter from the State Headquarters of Selective Service System requesting information, which statement was made a part of defendant's Cover Sheet and which showed that he was exempt as a minister, that the administrative agency exceeded its authority, acted in excess of its jurisdiction, acted contrary to the Act and Regulations, acted without any evidence to support its determination, acted contrary to the evidence, acted without substantial evidence and in violation of defendant's rights under the Act, the Regulations and the due process clause of the Fifth Amendment to the Federal Constitution. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to page 64 thereof, which is incorporated herein and made a part hereof, as though copied at length herein.

19. The trial court erred in excluding from evidence defendant's exhibit "Q", which was a letter written by defendant on August 30, 1944 to the local board requesting a stay of induction pending a review of his case by State and National Headquarters of the Selective Service System. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to pages to thereof, which is incorporated herein and made a part hereof, as though copied at length herein.

20. The trial court erred in excluding from evidence testimony of defendant's witness Charles R. Hessler of

and concerning preparation and schooling of defendant for his ministry and his activity as a regular and duly ordained minister of religion since the year 1936, said witness offering to testify that he was a local supervising minister of Jehovah's witnesses acting as presiding minister for several congregations in the neighborhood of Pittsburgh, that he had been acquainted with defendant since 1936; knew that defendant began attending Watchtower School conducted by Jehovah's witnesses at Pittsburgh for the training of students preparing for the ministry and defendant regularly attended such school once each week from 1936 to 1941; that such school used the Bible as the principal textbook, Watchtower publications as ancillary textbooks and that the course covered the use of the Bible, Bible concordances, Bible dictionaries, a study of various translations of the Bible and various versions of the Bible, a study of Bible manuscripts, together with a course in public speaking; that at such s ool lectures and sermons on proper conduct as ministers were regularly delivered; that as part of such training, an average of one hour attendance each week was required; moreover that defendant enrolled in the Gates Kingdom School in 1936, which was established to educate children of Jehovah's witnesses excluded from public schools on account of their refusal to salute the flag; that defendant duly enrolled in such school in 1936 where he pursued his high school subjects until he graduated in 1941; that during the time defendant was in attendance at Gates Kingdom School from 1936 to 1941 he regularly pursued a course of study prescribed by the school for the for the training of young men for the ministry; that such course of study was in addition to the regular course and required his completing the course in Bible reading, study of Bible characters, Bible history, Bible dictionaries and concordances, study of Bible stories, study of Bible helps and Bible tracts published by the Watchtower Bible and Tract Society; that such course of study was not conducted

as a "Sunday School" but was taught the students enrolled therein as a regular ministry training course; that such course lasted from September to May of each year, five days each week, requiring at least two hours daily study in addition to recitation hours; that the witness Hessler had personally seen defendant discharge his duties as a regular minister while enrolled at such school, saw him preach to others, had seen him grow and increase in ability, knowledge and wisdom since the time he enrolled in such school; that the service performed by defendant as a minister was not done as a *lay worker*, but only as an ordained minister; that defendant stood in relation to Jehovah's witnesses in the same way as did the orthodox clergy; that defendant was capable of performing ceremonies such as burial, baptism and other such ceremonies; that since October, 1941, defendant had been regularly performing his ministerial duties on the average of 150 hours each month in addition to time required for daily study and preparation for carrying on his ministerial duties; that the witness personally authorized defendant Estep to act as a minister in behalf of the Watchtower Bible and Tract Society and Jehovah's witnesses in 1936; all of which evidence was offered for the purpose of *de novo* inquiry by the Court as to the ministerial status of defendant under the Selective Training and Service Act of 1940. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to pages 91 to 99 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

21. The trial court erred in excluding from evidence testimony of defendant's witnesses, Charles H. Stewart Jr., of and concerning preparation and schooling of defendant for his ministry and his activity as a regular and duly ordained minister of religion since the year 1936, said witness offering to testify that he was a local supervising minister of Jehovah's witnesses acting as presiding minister for a

congregation in the Pittsburgh area; that he had been acquainted with defendant since 1927; knew that defendant began attending Watchtower School conducted by Jehovah's witnesses at Pittsburgh for the training of students preparing for the ministry and regularly attended such school once each week from 1936 to 1941; that such school used the Bible as the principal textbook, Watchtower publications as ancillary textbooks and that the course covered the use of the Bible, Bible concordances, Bible dictionaries, a study of various translations of the Bible and various versions of the Bible, a study of Bible manuscripts, together with a course in public speaking; that at such school lectures and sermons on proper conduct as ministers were regularly delivered; that as part of such training, an average of one hour atendance each week was required; moreover, that defendant enrolled in the Gates Kingdom School in 1936, which was established in 1935 to educate children of Jehovah's witnesses excluded from public schools on account of their refusal to salute the flag; that defendant duly enrolled in such school in 1936 where he pursued his high school subjects until he graduated in 1941; that during the time defendant was in attendance at Gates Kingdom School from 1936 to 1941 he regularly pursued a course of study prescribed by the school for the training of young men for the ministry; that such course of study was in addition to the regular course and required his completing the course of Bible reading, study of Bible characters, Bible history, Bible dictionaries and concordances, study of Bible stories, study of Bible helps and Bible tracts published by the Watchtower Bible and Tract Society; that such course of study was not conducted as a "Sunday School" but was taught the students enrolled therein as a regular ministry training course; that such course lasted from September to May of each year, five days each week, requiring at least two hours daily study in addition to recitation hours; that the witness Stewart had personally seen defendant dis-

charge his duties as a regular minister while enrolled at such school, saw him preach to others, had seen him grow and increase in ability, knowledge and wisdom since the time he enrolled in such school; that the service performed by defendant as a minister was not done as a *lay worker*, but only as an ordained minister; that defendant stood in relation to Jehovah's witnesses in the same way as did the orthodox clergy; that defendant was capable of performing ceremonies such as burial, baptism and other such ceremonies; that since October, 1941, defendant had been regularly performing his ministerial duties on the average of 150 hours each month in addition to time required for daily study and preparation for carrying on his ministerial duties; all of which evidence was offered for the purpose of *de novo* inquiry by the Court as to the ministerial status of defendant under the Selective Training and Service Act of 1940. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to pages 91 to 101 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

22. The trial court erred in excluding from evidence testimony of defendant's witnesses, T. A. McNight, Earl V. Singer and Earl Ferree, who are Jehovah's witnesses and would have testified that they had been acquainted with defendant Estep for several years, knew him to be one of Jehovah's witnesses, knew when he began attending the Watchtower School and the Gates Kingdom School, had seen him perform service as a minister from 1936 to 1941 while attending said Kingdom School in preparation for his ordination, had seen him preach as a minister full-time since his ordination in 1941, knew that at the time defendant registered under the Selective Training and Service Act he was performing his ministry full time and that at such time his whole life was dedicated to the furtherance of the activity and work of Jehovah's witnesses; that

he stood in relation to Jehovah's witnesses in the same way as do the orthodox clergy toward their denominations, knew that Estep is capable of performing ceremonies such as burial, baptism and other like ceremonies, that he performed duties that were exclusively ministerial and primarily missionary and evangelistic by teaching the people publicly and from house to house of and concerning God's Kingdom as the only hope of the world which work was done by him as a minister and not a *lay worker;* that in carrying on his work as a full-time ordained minister of Jehovah's witnesses defendant served on an average of 150 hours monthly in addition to time required for daily study and preparation for carrying on his ministerial duties; all of which was offered for the purpose of *de novo* inquiry by the Court as to the ministerial status of defendant under the Selective Training and Service Act of 1940. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is here made to pages 99 to 101 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

23. The trial court erred in excluding from evidence testimony of the defendant of and concerning his activity as an ordained minister of religion and affecting his ministerial status and classification under the Act and Regulations showing that he was brought up by parents as a Christian "in the nurture and admonition of the Lord", trained at home, with the purpose of ultimately entering the ministry; that he entered the Watchtower School of ministry in the year 1936 at which time he made up his mind at the age of 13 that his occupation and profession would be that of an ordained minister when he became qualified; that he enrolled in the Watchtower School and the Gates Kingdom School to prepare as a minister in the year 1936 which school is located at Gates, Pennsylvania; that he attended classes in that school for the profession of

minister many hours each day for five days weekly during five years; that he had a regular course of instruction which he pursued for several years from 1936 to 1941, from which he undertook the performance of his duties as a minister although unordained and on part time, and after becoming a regular ordained minister in 1936, he continued to study for the purpose of preparing himself for his ultimate ordination as a full time minister; that he preached as a regular minister from house to house, primarily; that he was ordained in 1941; that since such time he has performed his duties as an ordained minister regularly; that he began his full-time pioneer ministry as an evangelist, teaching and preaching under the direction of the Watchtower Bible and Tract Society, on October 1, 1941; that he had been assisting presiding minister of the Washington, Pennsylvania, Company of Jehovah's witnesses from March 1941 to September 1943; that he performed duties, ceremonies, such as baptismal ceremonies, burial and memorial ceremonies, and stands in the same relation to the congregation of Jehovah's witnesses as do ministers of other denominations, and is looked upon by the members of the congregation as standing in relation to them as do the orthodox clergy of other denominations; that in addition thereto, he is an evangelist and missionary worker whose primary duty is to assist in the forming of, establishing and sustaining congregations; that the performance of his duties as a minister consisted of calling from house to house, making back calls upon people after the initial calls to answer Bible questions and for the purpose of establishing Bible studies in people's homes; that in addition to that he does public street witnessing by distributing Watchtower and Consolation magazines; that he is a teacher and instructor of Bible studies in the homes of the people, over which studies and study groups he presides and acts as an ordained minister of religion to those various study groups; that the scriptural authority for preaching of Jehovah's witnesses being

the same as that of Christ Jesus; that Jehovah's witnesses are incorporated and are a Society of ministers, and the Watchtower Bible and Tract Society is the legal governing body of that group known as Jehovah's witnesses; that before he was classified by the appeal board, he showed all those facts to the local board. This error is more particularly described in the stenographic report of the evidence and the proceedings, and reference is made here to pages 99 to 101 thereof, which is incorporated herein and made a part hereof as though copied at length herein.

24. The trial court erred in overruling and denying defendant's motions to dismiss the indictment, for a judgment of acquittal and for a directed verdict, which were made at the close of all the evidence, which said motions appear at pages 158 to 168 of the stenographic report of the evidence and the proceedings and is incorporated herein and made a part hereof as though copied at length herein.

25. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 1, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

26. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 2, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

27. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 3, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at

length herein, to which ruling of the court defendant duly excepted.

28. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 4, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

29. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 5, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

30. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 6, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

31. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 7, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

32. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 8, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

33. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 9, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

34. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 10, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

35. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 11, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

36. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 12, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

37. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 13, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

38. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 14, duly

tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

39. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 15, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

40. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 16, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

41. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 17, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

42. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 18, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

43. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 19, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which

is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

44. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 20, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

45. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 21, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

46. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 22, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

47. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 23, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

48. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 24, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

49. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 25, duly

tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

50. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 26, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

51. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 27, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

52. The trial court erred in refusing to instruct the jury according to defendant's requested instruction No. 28, duly tendered at the close of all the evidence and before argument of counsel, appearing fully in the record which is incorporated herein by reference as though copied at length herein, to which ruling of the court defendant duly excepted.

53. The trial court erred in charging the jury that it could not inquire into the illegality of the board's order, or consider whether or not the draft boards had illegally denied defendant's right to submit evidence and illegally classified him, in defense to the indictment, over objection and exception of defendant that the action of the court denied him his right to be heard in his defenses, contrary to the Fifth Amendment to the Federal Constitution.

54. The trial court erred in charging the jury, in substance, that neither the court nor the jury can review the act or classifications of the local board or the appeal board,

over the objection and exception of defendant which appear in the record and are incorporated herein by reference as though copied at length herein.

55. The trial court erred in charging the jury, in substance, that the exemption from training and service as a minister is not an issue before the court or jury, as claimed by defendant, over objection and exception of defendant, which appear in the record and are incorporated herein by reference as though copied at length herein.

56. The trial court erred in charging the jury, in substance, that a classification by the administrative agency that defendant was liable for training and service would be binding upon court and jury and could not be considered by the court or jury as a defense to the indictment, though it was alleged the boards had violated the rights of defendant contrary to the Act, the Regulations, and the due process clause of the Fifth Amendment to the Federal Constitution, which error appears in the record and is incorporated herein by reference as though copied at length herein.

57. The trial court erred in charging the jury, in substance, that the jury could not consider the fact as to whether or not defendant had been denied his rights to exemption as a minister of religion and that the jury was bound by the finding of the draft boards, over objection and exception of defendant, which appear in the record and are incorporated herein by reference as though copied at length herein.

58. The trial court erred in charging the jury that it was neither for the court nor the jury to say whether defendant was a minister or not and that if the boards made a mistake or violated defendant's rights, the court, in defense to the indictment, is not the place to review or question the illegality of the action of the draft boards and that the question for the jury to decide was whether or not defendant submitted to induction, that defendant must submit to induction and that the court and jury must accept the classi-

fication given him by the draft boards in determining his liability for training and service under the Act, which error appears in the record and is incorporated herein by reference as though copied at length herein.

59. The trial court erred in charging the jury, in substance, that it was the duty of defendant to submit for induction even though he was a minister of religion and was exempt under the Act as a minister, over objection and exception of defendant, which error appears in the record and is incorporated herein by reference as though copied at length herein.

60. The trial court erred in charging the jury, in substance, that the sole issue for the jury to decide was whether or not the defendant knowingly failed to submit to and be inducted, over objection and exception of defendant, which appears in the record and is incorporated herein by reference as though copied at length herein.

61. The trial court erred in overruling defendant's objections to the court's charge on the grounds that the Act and Regulations had been construed in such a manner as to deny defendant his right to be heard in his defense, contrary to Article III of the Federal Constitution and the Fifth and Sixth Amendments thereto.

62. The verdict of the jury was contrary to the law and the facts, to which verdict of the jury the defendant at the time made objection.

For the above assigned errors the defendant-appellant respectfully requests that the judgment of the trial court be reversed and the defendant- appellant be released from all charges.

Docket Entries

1944

Sept. 20, True Bill.

" 20, Indictment filed.

" 26, On motion of United States Attorney, order made directing that bench warrant issue for defendant Bond $1000.00

" 26, Bench warrant issued.

Oct. 4, Bond of defendant taken, approved and filed ($1000.00 - Clarence G. Meng).

" 5, Defendant pleads NOT GUILTY.

" 7, Bench warrant returned executed.

" 6, Temporary commitment issued.

" 7, Temporary commitment returned not executed, defendant having furnished bond.

Nov. 22, Motion to quash indictment filed.

Dec. 6, Hearing on motion to quash indictment before Schoonmaker, J.

" 6, Motion denied; hearing concluded.

" 6, Hearing Memo. filed.

" 7, Trial opens at 10:10 A.M. before Schoonmaker, J.

" 7, Defendant's requested Instructions Nos. 1 to 28 inclusive filed.

Dec. 7, Trial closes at 3:38 P.M.

" 8, Trial Memo. filed.

" 8, Stipulation to receive a majority verdict and waiving the right of a unanimous verdict, filed.

" 8, The jury find defendant guilty as indicted; this verdict is rendered in pursuance of a stipulation of the parties filed herein to the effect the issue of the guilt of the defendant may be decided by a majority verdict of the jury. Verdict filed.

" 20, The sentence of the court is defendant be placed in a penitentiary for five years; no fine or costs. (S) counsel

" 20, Notice of and grounds for appeal filed.

" 20, Assignments of error filed.

" 20, Praecipe to clerk for record of appeal filed.

" 20, Appeal bond of defendant taken, approved and filed. ($1000.) (Clarence Meng.)

" 21, Copies of notice of appeal mailed to Mr. Rowland and Mr. Mashank.

" 21, Transcript of testimony filed by leave of Court.

[fol. 279] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8810

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

WILLIAM MURRAY ESTEP, Defendant-Appellant

Appeal from the District Court of the United States for the Western District of Pennsylvania

And now, to-wit: this 8th day of February A. D. 1945, it is ordered that Hon. John J. Parker, U. S. Circuit Judge, for the Fourth Circuit, and Hon. Paul C. Leahy, District Judge, for the District of Delaware, be, and they are hereby assigned to sit in above case in order to make a full court.

John Biggs, Jr., Circuit Judge.

Endorsements: Order Assigning Hon. John J. Parker and Hon. Paul C. Leahy for Argument. Received & Filed Feb. 8, 1945. William P. Rowland, Clerk.

[fol. 280] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8810

UNITED STATES OF AMERICA

vs.

WILLIAM MURRAY ESTEP, Appellant

And afterwards, to wit, the 8th day of February, 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John J. Parker and Honorable John Biggs, Jr., Circuit Judges, and Honorable Paul C. Leahy, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

[fol. 281] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8810

UNITED STATES OF AMERICA, Appellee

vs.

WILLIAM MURRAY ESTEP, Appellant

ORDER

Present: Parker and Biggs, Circuit Judges, and Leahy, District Judge

And Now, to wit, this 25th day of April, 1945,

It Is Ordered that the above entitled cause be and the same hereby is set down for rehearing before the court en banc on May 31, 1945; and it is

Further Ordered that the court en banc shall consist of Parker, Biggs, Maris, Goodrich and McLaughlin, Circuit Judges, and of Leahy, District Judge.

By the Court, Biggs, U. S. Circuit Judge.

Endorsements: Order Setting Case for Reargument before Court en banc. Received & Filed Apr. 25, 1945. Wm. P. Rowland, Clerk.

[fol. 282] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8810

UNITED STATES OF AMERICA

vs.

WILLIAM MURRAY ESTEP, Appellant

And afterwards, to wit, the 31st day of May, 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for reargument sur pleadings and briefs, before the Honorable John J. Parker, Honorable John Biggs, Jr., Honorable Albert B. Maris, Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and Honorable Paul C. Leahy, District Judge, and

the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 6th day of July, 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 283] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8810

UNITED STATES OF AMERICA

v.

WILLIAM MURRAY ESTEP, Appellant

Appeal from the Judgment of the District Court of the United States for the Western District of Pennsylvania

Before Parker, Biggs, Maris, Goodrich and McLaughlin, Circuit Judges, and Leahy, District Judge

OPINION OF THE COURT—Filed July 6, 1945

By GOODRICH, Circuit Judge:

Defendant, Estep, one of Jehovah's Witnesses, was indicted for failure to obey an order of his local board directing him to appear and be inducted into the United States Navy (50 U. S. C. A. Appendix § 311), and was found guilty. Estep had appeared at the induction center, after having been examined and found acceptable, and was told to "take one step forward"[1] constituting his induction into the Navy. He refused, giving the officer in charge a letter in which he asserted that as "a regular or duly ordained minister of religion" he was entitled to exemption from training and service by reason of Section 5 (d) of the Selective [fol. 284] Training and Service Act of 1940 as amended, 50 U. S. C. A. Appendix § 305(d).

The facts are as follows. On June 30, 1942, Estep reg-

[1] Directive of the Bureau of Navy Personnel, June 2, 1944, Circular Letter No. 11-44, provides for this method of induction.

istered. Subsequently he filed his questionnaire in which he claimed to be a minister and entitled to IV-D status. The local board unanimously classified him I-A; he appeared before the board claiming IV-D classification. This was refused; and on October 27, 1942, he filed notice of appeal. Shortly thereafter, he attempted to file three affidavits corroborative of his activities as a minister of religion which the chief clerk refused, a refusal which the defendant asserts violated Section 615.43 of Selective Service regulations.[2]

On cross-examination at the trial, the United States Attorney objected to the attempt by Estep's counsel to determine whether the clerk had lied as to the whereabouts of Estep's file; he was sustained. It is claimed this was error if for no other reason than that the credibility of the witness was involved in the question, but retrial on this ground alone was waived. The file or Cover Sheet was actually lost and apparently not found until early in 1944.

On February 22, 1944, Estep wrote to the local board stating that so far as he knew his case was being considered by the appeal board and that he did not wish to add to his file as it contained full explanation of his position. On April 19, 1944, Estep was directed to report for pre-induction physical examination; he was found fit for service and acceptable by the Navy. On May 23, 1944, Estep wrote to the local board stating he had examined his file and found certain documents missing; he inclosed eleven affidavits;[3] and he requested reconsideration of his I-A classification.[4]

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[2] Selective Service Regulations, Section 615.43, provides in part: "Every paper pertaining to the registrant except his Registration Card • • • shall be filed in his Cover Sheet • • •."

[3] This letter and accompanying documents are marked "Deft's Ex. 'A', 12/7/44 H. T.," but were not admitted in evidence despite this designation. However, the brief of the United States refers to these documents as though in evidence and in fact sent to appeal board by local board.

[4] Selective Service Regulations, Section 626.2, provide in part: "The local board may reopen and consider anew the classification of a registrant • • • upon the written request of the registrant • • •, if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification • • •."

[fol. 285] Of all the documents in his file these alone were not stamped; the chief clerk testified they were in the file but "not a part of his file." On July 28, 1944, Estep's file was forwarded to the appeal board. Accompanying it was a letter by the assistant clerk of the local board asserted to be violative of Section 627.13 (b) of the Regulations.[5] On August 2, 1944, the appeal board unanimously classified Estep I-A and ordered him to report for induction on September 11, 1944. The events transpiring at the induction center have already been set out.

Estep asserts denial of due process of law by those charged with administering the Selective Training and Service Act. He contends that the local board's "Order to Report for Induction" was without legal sanction; that he had exhausted the Selective Service process; and that he was entitled to raise these matters as a defense in his trial on the criminal indictment for violation of the Selective Service Act.

In one of the earlier decisions applying the Selective Service Act, this Court said in United States v. Grieme, 138 F. (2d) 811 (C. C. A. 3, 1942), "We think it is clear that, if a local draft board acts in an arbitrary and capricious manner or denies a registrant a full and fair hearing, the latter, although bound to comply with the board's order, may, by writ of habeas corpus, obtain a judicial determination as to the propriety of the board's conduct and the character of the hearing which it afforded. The registrant may not, however, disobey the board's orders and then defend his dereliction by collaterally attacking the board's administrative acts." See also Ex Parte Stanziale, 138 F. (2d) 312 (C. C. A. 3, 1943), cert. den. 320 U. S. 797 and United States v. Pitt, 144 F. (2d) 169 (C. C. A. 3, 1944). [fol. 286] The Fourth Circuit took a somewhat different view in Goff v. United States, 135 F. (2d) 610 (C. C. A. 4, 1943). In Falbo v. United States, 320 U. S. 549 (1944), the Supreme Court referred to the conflict and adopted the view

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[5] Selective Service regulations, Section 627.13 (b) provide in part: "In preparing • • • a summary [of the written information in registrant's file], the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision."

stated in the Grieme case, supra. Even before the Falbo decision, supra, the same principle had been recognized. In the concurring opinion in Hirabayashi v. United States, 320 U. S. 81 (1943), Mr. Justice Douglas regarded it as settled law, and cited the Grieme case, supra, among others, as an instance in the law where "one must obey an order before he can attack as erroneous the classification in which he has been placed." And in the Falbo case, the Supreme Court held that Congress has not "authorized judicial review of the propriety of a board's classification in a criminal prosecution for wilful violation of an order directing a registrant to report for the last step in the selective process * * *."

Defendant accepts the Falbo decision, as of course he must. But he contends that the "last step in the selective process" is acceptance by the military forces after pre-induction examination, and appearance at local board and induction center, rather than actual induction into service. For this he relies heavily on the decision in Billings v. Truesdell, 321 U. S. 542 (1944) which followed less than four months after the Falbo decision. The holding in the Billings case was that a man is not subject to military law or discipline until inducted and he is not inducted when accepted by the military but only when he has undergone the formal induction ceremony. The distinction thus made between acceptance and induction serves defendant as a basis for his contention that acceptance completes the administrative process, and that thereafter judicial review of classification can be called for.

In deciding when the administrative process is completed, it is relevant to keep in mind what all the activity is for. It is not ceremonial ritual, nor was it designed to provide committee activity for citizens of the various communities. [fol. 287] It was, and is, designed to provide an Army and a Navy in a time of national emergency. The language of Congress, of the Supreme Court, and of those responsible for the administration of the selective service system, all make this clear.

In the first words of the Act itself, Congress declared it "imperative to increase and train the personnel of the armed forces of the United States." 50 U. S. C. A. Appendix § 301 (a). The Supreme Court, taking note of Congressional intent in the Falbo case, emphasized that "the Act

was passed to mobilize national manpower with the speed which that necessity and understanding required."

Couple these statements with the fact that the Act contains no explicit provision for judicial review prior to induction and Congressional design becomes manifest. The needs of the country come before those of the individual. Public necessity outweighs temporary individual inconvenience, even, it may be admitted, imposes considerable individual hardship in some cases. We cannot force the recruiting of the armed forces to wait while a civilian litigates his own private claims. Until a man is actually inducted he remains a civilian and military need is unsatisfied. The Billings case, far from being of aid to defendant, only makes it clearer that civilian status remains unchanged until induction actually takes place. So far as achieving what Congress intended is concerned, it makes no difference whether a man refuses to register, or to fill out a questionnaire, to report to local board or induction station, or refuses to be inducted. In any event, the end is not achieved while the man remains a civilian. Until he is inducted the administrative process has not been exhausted. Until it is, the registrant may not challenge validity of the local board's order in court.

The intent of the Act is further reflected in the Selective Service Regulations which provide in part that an order to report for induction carries with it the duty "to report for [fol. 288] induction"[6] and "to submit to induction."[7] The order is clearly part of the administrative process which is not exhausted until the order is fully obeyed. Partial obedience is not exhaustive. We think the explicit language of the Regulations is in accord with what seems to us the clear Congressional purpose of the Act.

The Falbo case, supra, goes much further than establishing a mere procedural requirement. The principle laid down, as already noted, is based on Congressional intent concerning necessity of uninterrupted speed in fulfilling the local board's orders, for complete achievement of national defense. As was pointed out in Smith v. United States, 148 F. (2d) 288 (C. C. A. 4, 1945): "Among the advantages in cases such as this of limiting the remedy of the draftee to habeas corpus proceedings commenced after the adminis-

[6] Selective Service Regulations, Section 633.21 (a).

[7] Selective Service Regulations, Section 633.21 (b).

trative process has been completed is that * * * questions which are primarily constitutional in character are heard before a judge without the distractions and uncertainties likely to accompany a criminal jury trial. Constitutional rights of citizens must, of course, be preserved in war as well as in peace; but the procedure outlined in the Falbo and Billings cases enables the courts to preserve without unduly interfering with the war effort."

Still another consideration has been presented by Connor and Clarke, Judicial Investigation of Selective Service Action, (1945) 19 Tulane Law Review 344: "* * * a criminal proceeding presents an inappropriate forum for testing selective service action. This is evident because if the alleged improper or illegal action were not established as a defense nothing remains for the court to do but to fine or imprison the defendant, and the latter penalty is usually imposed. In any case the armed forces have lost a unit of manpower, whereas if the hearing is on a petition for the writ of habeas corpus the petitioner would in such a case be returned immediately to military control to begin his [fol. 289] training. On the other hand, if the allegations of the defendant in the criminal proceedings were sufficiently convincing to justify acquittal he is discharged, but the same result obtains when the hearing is on the writ of habeas corpus."

After the Falbo and Billings cases, supra, a number of cases arose in the various circuits. One case, Tung v. United States, 142 F. (2d) 919 (C. C. A. 1, 1944) must be distinguished for there the defendant, "had not somewhere along the line by choice abandoned the administrative remedies given him by the Act, but instead was attempting to pursue them [by means of appeal]." There followed a series of cases where the registrant had not gone quite as far toward completion of the administrative process as in the instant case. Defendant either did not report to induction station or to the local board. See for example: Giese v. United States, 143 F. (2d) 633 (U. S. Ct. of App. 1944), affirmed, Per Curiam, 323 U. S. 682; Enge v. Clark, 144 F. (2d) 638 (C. C. A. 9, 1944); Bagley v. United States, 144 F. (2d) 788 (C. C. A. 9, 1944); United States v. Madole, 145 F. (2d) 466 (C. C. A. 2, 1944); Biron v. Collins, 145 F. (2d) 759 (C. C. A. 5, 1944); Goodrich v. United States, 146 F. (2d) 265 (C. C. A. 5, 1944); Tatum v. United States, 146 F. (2d) 406 (C. C. A. 9, 1944); Shigeru Fujii v. United States,

148 F. (2d) 298 (C. C. A. 10, 1945); Klopp v. United States, 148 F. (2d) 659 (C. C. A. 6, 1945). In still another case, Harris v. Ross, 146 F. (2d) 355 (C. C. A. 5, 1944), habeas corpus was properly brought after induction to test lack of due process. In all of these cases the ratio decidendi was that of the Falbo case, as we have interpreted it.

Two decisions present facts squarely in point with the instant case, United States v. Flakowicz, 146 F. (2d) 875 (C. C. A. 2, 1945), cert. den. April 30, 1945, and United States v. Rinko, 147 F. (2d) 1 (C. C. A. 7, 1945), cert. den. April 30, 1945. In each instance defendant was found "acceptable" after reporting for examination but refused to submit to induction. In the Rinko case, supra, the attempt to characterize the Billings case as a limitation of the [fol. 290] Falbo doctrine failed, because the court thought "it is unreasonable to suppose that the court intended thereby within less than 90 days following the Falbo decision to announce any different procedure than that approved in the Falbo decision—at least not by implication."

In Smith v. United States, 148 F. (2d) 288 (C. C. A. 4, 1945), another issue was involved in the case and in part determined its conclusions. The general rationale, however, flowed clearly from the Falbo doctrine so far as it could be applied to the facts of that case. Specifically the Smith case stated, "the administrative process is not exhausted until the order of the board is complied with, which, as we have seen, embraces submitting to induction."

Our conclusion does not make a trap of the Falbo case. While defendant must report to the military in order to exhaust his administrative remedies, this does not mean that he can be forcibly inducted; nor does it mean that his induction is an exercise of free will and untrammeled choice. It simply means that when defendant submits to induction to exhaust administrative procedure he does so, under protest of the military's rights to hold him, as a duty of cooperation in effective law enforcement. Such submission is far different from either voluntary induction or forcible induction. Admittedly, under the Billings decision, forcible induction is no induction at all. And admittedly, where there is a voluntary submission to the authorities, habeas corpus cannot be brought because there can be no

deprivation of freedom through a voluntary act.[8] But to submit under a command of law good at face value is not voluntary submission such as will bar judicial review. The law knows a number of situations, even in peacetime, where submission is regarded, as it should be here, as a duty of cooperation in effective law enforcement rather than as a voluntary submission such as will bar judicial review. "Thus it is his duty to submit to arrest, upon a warrant [fol. 291] valid on its face, even though the warrant may turn out later to be invalid. A citizen who resists arrest under such circumstances may subject himself to punishment for so doing, in spite of his complete innocence of the original accusation upon which the warrant was issued. So, also, one who is held upon a commitment, valid on its face, may be guilty of escape if he forces his way out of custody, even though the commitment, when properly challenged, may prove to be insufficient. Again, one who is a fugitive from a State in which he is unjustly accused of crime may, nevertheless, be subjected to extradition if the indictment and requisition are in proper form. And he may become guilty of a crime, under the federal law, merely by fleeing to another State to escape prosecution." Giese v. United States, 143 F. (2d) 633, 635 (D. C. Ct. of App. 1944) affirmed, Per Curiam, 323 U. S. 682. The court, in the opinion from which this quotation is made, further points out, the order to report is comparable legal process valid on its face.

There is no need to confine ourselves to the broad principles derived from analogy alone however. There are sufficient decisions under the Selective Training and Service Act to make it clear that a man may submit to induction without losing his right to review by habeas corpus. It should be stated, in frankness, that the point has been assumed, rather than discussed by the courts. That fact, we believe, does not weaken the force of the decisions in showing the judicial attitude on the point. Harris v. Ross, 146 F. (2d) 355 (C. C. A. 5, 1945); Smith v. United States, 148 F. (2d) 288 (C. C. A. 4, 1945); United States ex rel. Reel v. Badt, 141 F. (2d) 845 (C. C. A. 2, 1944); United States ex rel. Brandon v. Downer, 139 F. (2d) 761 (C. C. A. 2, 1944); United States ex rel. Phillips v. Downer, 135 F.

[8] See Baker v. Grice, 169 U. S. 284 (1897); Ex Parte Simon, 308 U. S. 144 (1939); United States v. Peckham, 143 Fed. 625; Ex Parte Ford, 160 Cal. 334, 116 P. 757.

(2d) 521 (C. C. A. 2, 1943); Bagley v. United States, 144 F. (2d) 788 (C. C. A. 9, 1944) (dictum); United States v. Bowles, 131 F. (2d) 818 (C. C. A. 3, 1944) (dictum); affirmed 319 U. S. 33; Drumheller v. Berks County Local Board No. 1, 130 F. (2d) 610 (C. C. A. 3, 1942) (dictum); [fol. 292] Rose v. United States, 129 F. (2d) 204 (C. C. A. 6, 1942) (dictum). In the District Courts the principle has been recognized even more often than in the Circuit Courts. Ex Parte Stewart, 47 F. Supp. 410 (D. C. Cal. 1942); U. S. ex rel. Bayly v. Reckord, 51 F. Supp. 507 (D. C. Md. 1943); U. S. ex rel. Altieri v. Flint, 54 F. Supp. 889 (D. C. Conn. 1943), affirmed 142 F. (2d) 62; Micheli v. Paullin, 45 F. Supp. 687 (D. C. N. J. 1942); U. S. ex rel. Mauro v. Downer, 50 F. Supp. 412 (D. C. N. Y. 1943); In re Rogers, 47 F. Supp. 265 (D. C. Tex. 1942). Both as a matter of broad principle and actual application habeas corpus is firmly rooted in the law as a post-induction remedy that is not defeated by the fact of obedience to orders by the inductee.

The judgment of the District Court is affirmed.

BIGGS, Circuit Judge, dissenting:

The defendant, Estep, contends that he was denied due process of law by the Selective Service agencies and that the trial court also denied him his constitutional rights by ruling that he might not interpose the asserted invalidity of the order requiring him to report for induction as a defense to his indictment. I conclude for the reasons hereinafter stated that Estep was denied due process of law by the Selective Service agencies, that the order requiring him to report for induction was invalid and that the trial court erred in not permitting the defendant to assert this as a defense to his indictment. As I read the opinion of this court, the majority conclude that even if Estep was denied due process of law by the Selective Service agencies he may not raise this issue as a defense at his trial but must submit to induction and then seek relief by way of application for a writ of *habeas corpus*.

I shall call attention to certain facts which I think require particular consideration since, in my opinion, they show that Estep was denied due process of law by the [fol. 293] Selective Service agencies and by the court below in an erroneous interpretation of the existing law. Some of the circumstances appear from evidence received by the court below; others, from the offer of proof made by the de-

fendant during the course of the trial. For the purposes of this appeal, the matter contained in the offer of proof must be deemed to be true. Substantially all of it is documentary and its probative force may not be seriously controverted. I shall treat the proof in evidence and that contained in the defendant's offer as if they were one except for occasional specific references.

Estep, a member of the sect of Jehovah's Witnesses, was found guilty on an indictment charging him with failure to obey an order of his local board directing him to appear and be inducted for training and service in the United States Navy. Estep appeared at the induction center and when his name was called so that he might "take one step forward"[1] to constitute his induction into the Navy, he refused to take that step. Estep gave a letter to the officer in charge, stating his reasons for refusing induction. In this letter he asserted that he was "a regular or duly ordained minister of religion" and entitled to exemption from training and service by reason of Section 5 (d) of the Selective Training and Service Act of 1940 as amended, 50 U. S. C. A. Appendix § 305 (d). Estep's course was patterned on that of Billings. See Billings v. Truesdell, 321 U. S. 542. Compare the circumstances of United States v. Pitt. (CCA 3) 144 F. 2d 169.

Estep registered on June 30, 1942. His questionnaire was received by the local board on August 22, 1942. He stated in his questionnaire that he was a minister and claimed a IV-D classification. On October 3, 1942 the local [fol. 294] board by the unanimous action of its members classified him as I-A. On October 21, 1942 Estep appeared before the board and stated his reasons why he believed he was entitled to a IV-D classification. The following day the board informed Estep that after considering his case it refused to change his classification. On

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[1] A directive from the Bureau of Navy Personnel under date of June 22, 1944, Circular Letter No. 11-44, provides that the registrants assigned to naval service must be informed of the imminence of induction and that the inducting officer will then state to them: "You are now about to be inducted into the United States Navy. You will take one step forward as your name is called and such step will constitute your induction into the United States Navy."

October 27, 1942 Estep wrote a letter to the board in which he stated, "I hereby file notice of appeal from classification 1-A to classification 4-D." At a date not clear from the record but shortly after the date last mentioned, Estep went to the office of the local board and endeavored to file three affidavits, executed respectively by C. R. Hessler, by Earl Ferree and by William G. Reese. Hessler, Ferree and Reese were members of the sect of Jehovah's Witnesses and the subject matter of their affidavits was corroborative of Estep's assertion that he was a regular minister of religion. Estep had filed with the local board a copy of his certificate of association with the Watchtower Bible and Tract Society. The affidavits of Hessler, Ferree and Reese, the copy of the certificate of association aside, constituted the only corroboration offered by Estep of his asserted status as a minister of religion up to that time. The affidavits though included in the offer made by Estep's counsel at his trial, were not received in evidence.

The chief clerk of the local board refused to accept the affidavits, stating, according to Estep's testimony, that the board could not receive them because Estep's case was before the appeal board. On cross-examination at Estep's trial the chief clerk was asked the reason for his refusal to receive the affidavits. He replied that Estep had no right to file the affidavits since his case had come before the local board and had been "considered". He was then asked by Estep's attorney, "Mr. Clerk, you told him that his file was before the appeal board?" He replied, "I might have told him that, yes." He was asked, "Then you told him a lie?" He answered, "Possibly." Estep's counsel then inquired, "Why did you tell him a lie?" The [fol. 295] question was not answered for an objection interposed by the United States Attorney was sustained. Actually, at the time Estep offered the affidavits to the chief clerk, his cover sheet or file was lost. The file or cover sheet was not sent to the appeal board until 1944. Despite the fact that it was lost an anonymous communication with a newspaper clipping attached, received by the local board in an envelope postmarked December 2, 1942, found its way into the cover sheet. When this anonymous communication was offered in evidence by Estep's counsel, apparently as proof of irregularity of the proceedings before the board, it was refused admission. The clerk of the local board also testified that Estep's file "came

to light at the time * * * [Estep's] brother's case was before the Federal Court." This date is not in the record but the file or cover sheet apparently was found by the local board early in 1944.

On February 22, 1944 Estep wrote a letter to the local board in which he stated in part, "So far as I know my case is being considered by the Board of Appeal. I do not wish to add anything further to my file at this time as the information it now contains fully explains my position as a minister and sets forth my request for a minister's classification; that is, a IV-D classification."

On April 19, 1944 Estep was directed to report for a pre-induction physical examination and was found fit for service and acceptable by the United States Navy. On May 23, 1944 Estep wrote a letter to the local board in which he stated that he had gone over his file in the office of the local board and "* * * found that certain statements which had been attached to my questionnaire; ministerial certificate from the Watchtower Bible & Tract Society * * *; copy of 'Consolation' Magazine * * * [and certain other documents] are all missing from my file. I have prepared copies of these letters and statements and attach them hereto." Estep also said in the letter, "I believe that Local Board No. 4 has not given sufficient consideration to my case, and I request that they again reconsider it and [fol. 296] give me my proper classification as a regular and duly ordained minister, namely, IV-D. In October 1942 I presented to the Local Board for filing in my file a sworn statement dated October 17, 1942, and affidavits from C. R. Hessler, Earl Ferree, and William G. Reese. At that time I was advised that my file had been sent to the Appeal Board and that these papers could not be added to the file. Apparently the file has not been sent to the Appeal Board as yet, and I enclose these affidavits and request that the Local Board consider them and add them to my file." Enclosed with the letter were eleven affidavits (those of Hessler, Ferree and Reese hereinbefore referred to and eight additional affidavits also corroborative of Estep's asserted status, all rejected by the trial court) and certain other documents which need not be described here. The chief clerk of the local board testified that Estep's letter of May 23, 1944 was in Estep's file "but is not part of his file." Neither the letter nor any of its accompanying documents is stamped with the stamp of the local board.

On July 28, 1944 Estep's file was forwarded to the appeal board.[2] It was accompanied by a letter written by an assistant clerk of the local board to the appeal board. The letter was received in evidence. It states in part, "Mr. Estep is not listed as a minister in any list yet submitted from National Headquarters of Selective Service. Although this registrant is not gainfully employed and devotes his time to the ministry, he does not contribute enough hours to this work to be considered a full-time minister since he works only three days a week in that capacity and is not justified to a 4-D classification." The minutes of Estep's hearing of October 21, 1942 before the local board supply the only evidence from which the board could infer that he devoted only three days a week to his work as a member of the sect of Jehovah's Witnesses. [fol. 297] This evidence is slight, amounting to little more than a scintilla. A transcript of the minutes of Estep's hearing before the local board, though offered in evidence by Estep, was rejected by the trial court.

On August 2, 1944 the appeal board by unanimous action classified Estep as I-A.[3] He was ordered to report for induction on September 11, 1944.

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[2] The reason for the additional delay in forwarding Estep's appeal to the appeal board does not appear from the record. The lost file or cover sheet had been found prior to April 19, 1944.

[3] On August 10, 1944 a letter was written by the legal adviser for the State Director of Selective Service to the chairman of the local board, which stated, "We are returning the cover sheet of the above registrant [Estep]. On August 2, 1944, the board of appeal affirmed your I-A classification of October 3, 1942. * * * We would appreciate being advised as to the reasons for delay in acting on this case and your returning the cover sheet to us with your letter of explanation. When you return the cover sheet, please obtain from the registrant a statement as to his precise activities as a Jehovah's Witness at this time, including the amount of time he now devotes, and his official title in that organization." On August 22 a clerk of the local board enclosed Estep's "complete file" and wrote that "The delay in acting on this case was through an oversight on the office force." The letter also states that a statement was obtained from Estep as to his activities as a

Estep asserts as has been stated that he was denied due process of law by the tribunals and persons charged with administering the Selective Training and Service Act; because in particular, his local board and those acting for it or pursuant to its authority did not adhere to the regulations promulgated under Section 10 of the Act, 50 U. S. C. A. Appendix § 310. He contends in effect that the corroborative material offered by him was not received by the local board and was not considered by the appeal board; that if it had been considered these tribunals would have concluded that he was a regular minister of religion and entitled to exemption from training and service. He asserts also that the letter of July 28, 1944, written on behalf of his local board to the appeal board prejudiced his case with the appeal board. For these reasons he contends that [fol. 298] the order of the local board directing him to appear for induction was without legal sanction; and that, having exhausted the Selective Service process, he was entitled to raise these matters at his trial as a defense to the indictment. Before proceeding to a discussion of the principles of law embodied in the decisions of the Supreme Court in Billings v. Truesdell, *supra*, in Falbo v. United States, 320 U. S. 549, and decisions of lower federal courts in other cases, it is necessary to refer to pertinent Selective Service Regulations and their application to the facts as stated.

Estep offered the first substantial corroboration of his activities as an asserted minister of religion of the sect of Jehovah's Witnesses to the chief clerk of the local Board, albeit after he had appealed, at the end of October or the

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Jehovah's Witness as of the date of the letter. This statement is not in evidence and is not included in any part of Estep's file or cover sheet with the local board, presently before us. On August 25 a letter was written by the Deputy State Director to the local board stating that "* * * it is apparent that there has been considerable irregularity in the handling of this case, and we are disturbed by the inadequacy of the explanation offered. * * *" The letter went on to say, "We are now particularly concerned in having the file perfected and in having the case further processed in accordance with the obvious requirements, in that you complete the 'Local Board' action on receiving decision of Board of Appeal * * * and proceed to order the registrant for induction * * *".

beginning of November, 1942. This material included the affidavits of Hessler, Ferree and Reese. The clerk refused to receive these affidavits on a ground unfounded in fact. Section 615.43 of the Selective Service Regulations provides in part: "Every paper pertaining to the registrant except his Registration Card * * * shall be filed in his Cover Sheet * * *" Estep testified that he offered the affidavits in order that they might be sent by his local board to the appeal board to be considered by the latter in disposing of his case. He did not, as he now asserts, seek at that time to have his classification reopened by the local board. Had he been aware of the fact that his cover sheet had not gone to the appeal board, he would have been entitled to insist that the affidavits be received by the local board and his case given further consideration.

In view of the fact that Estep's cover sheet or file had not gone forward to the appeal board, the local board should have received the affidavits and put them in the cover sheet as required by Section 615.43 of the Regulations. Perhaps, the chief clerk of the local board without warrant in fact permitted Estep's counsel at the trial to attribute to him a base motive when he agreed that "Possibly" he might have lied to Estep. The clerk may have meant nothing more than [fol. 299] that he was mistaken in telling the registrant that his file had gone to the appeal board. Inquiry into the clerk's motives was terminated by the objection interposed by the United States Attorney. The learned District Judge erred in sustaining this objection if for no other reason than because the question would have thrown light upon the credibility of the witness. At the reargument of this cause before the court *en banc* Estep's counsel stated that he waived this ground for a new trial. He made plain, however, that he did not retreat from his position that the misinformation given by the chief clerk of the local board to Estep as to the status of the latter's file was a denial of due process of law.

It may be pointed out that Estep on February 22, 1944, knowing that the proffered corroborative material had been rejected in 1942, wrote to the local board and stated that he did not wish to add anything further to his file. It could be contended that by this admission Estep showed himself to be content with the rejection of the affidavits of Hessler, Ferree and Reese, that he was satisfied with his file as then constituted and that therefore any breach by the local board

of Section 615.43 became immaterial. But statements made by a registrant should not be treated as an exercise in polemics to end that he may be trapped by his own lack of logic. Since the chief clerk of Estep's local board either lied to him or materially misstated facts with the effect that the registrant concluded that this corroborative material could not be received and therefore could not be considered either by the local board or the appeal board, I think it is necessary to conclude that Estep in this regard was not afforded due process of law by the local board.

Whatever may have been Estep's attitude in respect to the rejection of the proffered corroborative material in 1942, in his letter of May 23, 1944 Estep stated to the local board that he had examined his file and had found certain [fol. 300] documents to be missing. He enclosed with his letter [4] eleven affidavits designed to corro-rate his assertion that he was a minister of religion. These included the affidavits of Hessler, Ferree and Reese and eight additional affidavits. Estep also stated in his letter that he believed that the local board had not given sufficient consideration to his case and requested reconsideration of his I-A classification.

Section 626.2 of the Regulations provides in part: "The local board may reopen and consider anew the classification of a registrant * * * upon the written request of the registrant * * *, if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification * * *" The material enclosed by Estep with his letter of May 23 to the

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[4] Estep's letter of May 23, 1944 and the accompanying documents are marked "Deft's Ex. 'A', 12/7/44 H. T.", but they were not admitted in evidence despite this designation by the clerk or stenographer of the District Court. Nonetheless the United States Attorney refers to these documents as if they were in evidence and had in fact been sent to the appeal board by the local board. The brief of the United States states, "On May 22, 1944 he [Estep] sent, by registered mail, additional evidence to his Local Board with a request that same be placed in his file and forwarded to his Appeal Board. On July 28, 1944, his file was forwarded to the Appeal Board."

local board was corroborative though it also presented facts which were not considered by the local board when it made its original classification. The affidavit of Oliver G. Cuppett, asserting that Estep was the "company servant for the Uniontown company" of Jehovah's Witnesses, will serve as an example. Of course it may not be said that a consideration of this material necessarily would have required a change in Estep's classification. It might or might not have worked this result but the question was one for the local board to decide upon receipt of Estep's request for reclassification and an examination of the material submitted by him.

It seems probable that the local board did not receive the affidavits as a part of Estep's file or consider his request. As has been stated, the chief clerk of the local [fol. 301] board testified that though the letter of May 23 and the affidavits were in Estep's file they were "not a part of his file", and it is notable that of all the papers contained in Estep's cover sheet these documents alone were not stamped with the stamp of the local board. Section 626.3 of the Regulations provides in pertinent part: "When a registrant * * * files with a local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified * * *, it shall not reopen the registrant's classification. In such a case the local board, by letter, should advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and should place a copy of the letter in the registrant's file." The local board wrote no letter to Estep as required by the Regulation last quoted. From all these facts the inference could be drawn that the local board did not consider Estep's request or pass upon the corroborative material sent to it by him. Consideration of Estep's request for reclassification and examination of the material offered by him was a duty imposed upon the local board by the Act and the Regulations. Inquiry into the question of whether or not the local board considered Estep's request and examined the corroborative material was prohibited by the ruling of the court below. If the local board did not consider Estep's request for reclassification or examine the corroborative material offered by

him, in my opinion under the circumstances, it denied him due process of law. It should be pointed out that the registrant undoubtedly assumed, as he had the right to do, that his request for reclassification and the eleven affidavits had been included in his cover sheet. It is clear that in this instance Estep was not informed by the local board that this material was not to be included in his cover sheet. [fol. 302] The chief clerk of the local board stated categorically that the material referred to was not forwarded to the appeal board. It follows therefore that the appeal board's *de novo* consideration of Estep's case could not cure a denial to him of due process of law by the local board.

One final question relating to the Regulations remains for discussion. Section 627.13 (b) provides in part, "In preparing * * * a summary [of the written information in the registrant's file], the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision." The letter of July 28 written by the assistant clerk of the local board to the appeal board, quoted in material part at an earlier point in this opinion, violated this section. The letter was argumentative and contained expressions of opinion as to the information in the registrant's file. The regulation states that the local board "should be" careful to avoid the expression of opinion and "should refrain" from including any argument in support of its own decision and that other portions of Section 627.13 and the Regulations generally use the auxiliary verb "shall." But the auxiliary verb "should" should not be considered as merely precatory.[5] It was the intent of the framers of the Regulations by Section 627.13 (b) to make certain that an appeal board in considering the classifications of a registrant would embark upon that consideration unaffected by any observation, opinion, or argument of a local board. The Selective Service Regulations were intended to have and do have the effect of law. See Smith v. Richart (D. C. E. D. S. C.) 53 F. Supp. 582; United States v. Reckord, (DCDM) 51 F. Supp. 507, 510-513; United States v. Downer (CCA 2), 143 F. 2d 125. For analogy see United States v. Eliason

[5] Webster's New International Dictionary states, "*Should* is everywhere used in the same connection and the same senses as *shall*, as its imperfect."

Administratrix, 16 Pet. 291, 302; Nordmann v. Woodring, [fol. 303] 28 F. Supp. 573, 576. Cf. Standard Scale Co. v. Farrell, 249 U. S. 571, 577.

It may be argued that Estep has not shown that his cause was prejudiced before the appeal board by the letter of July 28. Such an argument is not entitled to weight. The selectee at his trial should not be permitted to bring the members of an appeal board before the court to show the basis of their classification of him. The President, authorized by Section 10 of the Selective Training and Service Act to prescribe the necessary rules and regulations to carry out the provisions of the Act, delegated this duty to the Director of Selective Service who promulgated the Selective Service Regulations. See. Executive Order No. 9410, of December 23, 1943, 8 F. R. 17,319. The agency charged with the administration of the Act promulgated the regulation with which we are presently concerned. From its terms, the conclusion is irresistible that the Director determined that the expression of opinion or argument in support of its decision by a local board to an appeal board might prove prejudicial to a registrant. We should not look behind this ruling. I conclude therefore that the action of the clerk of the local board in sending the letter of July 28 to the appeal board for consideration of its contents constituted a denial of due process of law to Estep.

Having reached these conclusions, it is necessary to find and apply the correct principles of law to the facts of the case at bar. This requires a discussion of the two leading decisions of the Supreme Court; viz., Falbo v. United States and Billings v. Truesdell, *supra*. It will be noted that after the date of the Billings decision the Selective Service process was changed so that registrants were given physical examinations prior to being ordered to report for induction. See the Act of December 5, 1943, 50 U. S. C. A. Appendix Section 304a. Estep, as we have stated, was given a physical examination and was found to be acceptable by the Navy. Following the Supreme Court's decision [fol. 304] in the Billings case, and perhaps because of it, the process of actual induction was altered so that selectees reporting at the induction center were required to take "one step forward" when invited to do so by the officer in charge, the "one step forward" constituting a selectee's actual induction into the Army or Navy. See note 1, *supra*. The Billings case holds that the selectee is not "actually

inducted" within the meaning of Section 11 of the Act, 50 U. S. C. A. Appendix Sec. 311, until he undergoes whatever "ceremony or requirements of admission" have been prescribed; that until "actually inducted" the selectee is subject solely to civil jurisdiction and therefore may not be tried by court martial. It follows that if the selectee refuses to take "one step forward" when directed to do so by the officer in charge of induction, that refusal would constitute a violation of the order of his local board to report for induction and, if that order is valid, the selectee will incur the penalties prescribed by Section 11 of the Act, 50 U. S. C. A. Appendix Sec. 311. In the Billings case Mr. Justice Douglas stated, 321 U. S. pp. 558-559, "* * * it should be remembered that he who reports at the induction station is following the procedure outlined in the *Falbo* case for the exhaustion of his administrative remedies. Unless he follows that procedure he may not challenge the legality of his classification in the courts. But we can hardly say that he must report to the military in order to exhaust his administrative remedies and then say that if he does so report he may be forcibly inducted against his will. That would indeed make a trap of the *Falbo* case by subjecting those who reported for completion of the Selective Service process to more severe penalties than those who stayed away in defiance of the board's order to report. These considerations together indicate to us that a selectee becomes 'actually inducted' within the meaning of § 11 of the Act when in obedience to the order of his board and after the Army has found him acceptable for service he undergoes whatever ceremony or requirements of admission the War Department has prescribed."

[fol. 305] In the Falbo decision, 320 U. S. pp. 554-555, Mr. Justice Black stated that Congress was not required to provide "* * * for judicial intervention before final acceptance of an individual for national service." He went on to say, "The narrow question therefore presented by this case is whether Congress has authorized judicial review of the propriety of a board's classification in a criminal prosecution for wilful violation of an order directing a registrant to report for the last step in the selective process. We think it has not. The Act nowhere explicitly provides for such review and we have found nothing in its legislative history which indicates an intention to afford it. The circumstances under which the Act was adopted

lend no support to a view which would allow litigious interruption of the process of selection which Congress created. * * * Surely if Congress had intended to authorize interference with that process by intermediate challenges of orders to report, it would have said so."

Reading the Falbo decision in the light of Billings v. Truesdell, I think that the Supreme Court construed the Act to afford no judicial intervention to disrupt the Selective Service process but did not interpret its provisions to mean that there should be no judicial review of the Selective Service process when it had been completed. If it were otherwise how could the Falbo case serve as a "trap" to subject those who reported for completion of the Selective Service process to more severe penalties than those who stayed away from the induction center in defiance of a board's order to report? The reference to a difference in possible penalties made by Mr. Justice Douglas is not an allusion to penalties which might be imposed by court martial as distinguished from those which might be imposed by civil tribunals for if the selectee refuses to report he remains subject to civil justice. I conclude therefore that Mr. Justice Douglas referred to the imposition of a penalty for failure to report for induction as distinguished from one imposed for refusal to be inducted after an order [fol. 306] of a local board requiring the selectee to report for induction. In the Falbo case Mr. Justice Black laid emphasis upon the necessity of not interrupting the Selective Service process, stating that there must be no litigious interruption of the process of selection which Congress had created; no intermediate challenge of orders to report.

But in the case at bar Estep exhausted the administrative procedures.[6] The Selective Service process was completed up to the final "one step forward" that a selectee must take to constitute his induction into the Armed Forces. At this point determination of the issue of whether or not a selectee had been awarded due process of law by the Selective Service agencies would not, in my opinion, constitute litigious interruption of the process of selection or an intermediate challenge to an order to report for induction. The question is not free from doubt, but as I read the

[6] It will be observed that Estep had no appeal to the President for the actions of both the local board and the appeal board were unanimous.

Falbo and Billings decisions there may be judicial intervention to determine whether the selectee has been afforded due process if he be indicted for his refusal to be inducted. The Selective Service process having been completed to this point, if judicial intervention is ever permissible to protect a constitutional right it is here. If judicial intervention may not be availed of by the selectee at this juncture, it will never be available for the "one step" which the registrant must take to constitute his induction is a "voluntary" one. The word "voluntary" is used for want of a more apt adjective. While the one step forward is compulsory in the sense that the selectee is compelled to take it or become liable to the sanctions and penalties imposed by Section 11 of the Act, none the less the step forward is voluntary in that the selectee is under no physical compulsion to take it. He takes the step forward or does not take it as his will dictates. The statement of the inducting officer to the selectees, "You will take one step forward as your name is called and such step will constitute your [fol. 307] induction * * *" cannot be deemed to be a command for the selectee is not yet subject to martial authority. See the language of the Billings opinion quoted above. The words of the inducting officer therefore are nothing more than a request to the selectee that he take one step forward to constitute his induction.

If the selectee takes the step he subjects himself to the jurisdiction of the naval or military authorities and thereafter cannot avail himself of the writ of *habeas corpus* to test the question of whether the Selective service agencies have afforded him due process of law for by subjecting himself to induction the selectee has deprived himself of his right to claim that he is subject to unlawful restraint by the naval or military forces. See McNally v. Hill, 293 U. S. 131 at p. 138, where Mr. Justice Stone stated, "Without restraint of liberty, the writ will not issue. * * * Equally, without restraint which is unlawful, the writ may not be used." If the selectee takes the one step forward he cannot thereafter assert that he did so under protest for, as we have shown, the inducting officer merely invites him to take the step. Compare United States v. Powell, 38 F. Supp. 183, 186. An analogy is presented by those cases in which the submission to custody was voluntary for the purpose of procuring the writ. See Baker v. Grice, 169 U. S. 284, 293-294; *Ex parte* Simon, 208 U. S.

144; United States v. Peckham, 143 F. 625; *Ex parte* Ford, 160 Cal. 334, 116 P. 757. See 39 C. J. S. Habeas Corpus § 10 and the authorities therein cited and 25 Am. Jur., Habeas Corpus, § 25. Cf. *Ex parte* Beach, 259 F. 956. It is the weight of authority that a writ of *habeas corpus ad subjiciendum* may not be awarded where the submission to restraint is voluntary. If the selectee who took the step forward thereafter refused to obey a lawful command of his superior officer and was held for court martial, it seems settled that he would not be entitled to be set at liberty by the writ. He would then be regularly in the custody of the military or naval authorities which would have juris-[fol. 308] diction to try him by military law for a military offense. Under such circumstances the civil courts could not intervene on his behalf. See United States v. MacDonald, 265 F. 695; *Ex parte* Dostal, 243 F. 664; *Ex parte* Beales, 252 F. 177; *Ex parte* Rock, 171 F. 240; and *In re* Davison, 21 F. 618.

It follows therefore that if the order of the local board directing the selectee to report for induction is invalid for any reason, unless the selectee can assert that invalidity as a defense to an indictment, he is indeed entrapped. Compare the decision of this court in U ted States v. Grieme, 128 F. 2d 811, and the very numerous decisions of like tenor. See for example United States v. Van den Berg, (CCA 7) 139 F. 2d 654; United States v. Sauler, (CCA 7) 139 F. 2d 173; and Harper v. United States, (CCA 5) 138 F. 2d 538. Cf. United States v. Rinko, (CCA 7) 147 F. 2d 1, and United States v. Flakowicz, (CCA 2) 146 F. 2d 874. I conclude that if the Selective Service process has been completed by the Selective Service agencies and the only incident remaining is submission to induction by the selectee, the selectee, who has refused induction, is entitled to assert as a defense to his indictment under Section 11 of the Act a denial to him of due process of law. No distinction can be made between the validity of the punitive sanctions imposed by Section 11 of the Act when invoked solely by reason of the violation of an induction order and the validity of the induction order itself. The punitive sanctions may not be said to be unassailable even though the induction order, the violation of which is the sole basis for imposition of the sanctions, is a mere nullity. If the induction order is a nullity because it has been directed to a selectee after failure of the Selective Service agencies

to afford him due process of law, the punitive sanctions of Section 11 may not be imposed validly. Cf. *Ex parte* Catanzaro, (CCA 3) 138 F. 2d 100, 102, *cert. den.* 321 U. S. 793, and *Ex parte* Stanziale, (CCA 3) 138 F. 2d 312, *cert. den. sub. nom.* Stanziale v. Paullin, 320 U. S. 797. To hold [fol. 309] otherwise would be to deprive the registrant or selectee of his rights under the Selective Training and Service Act. Cf. United States v. Pitt, (CCA 3) 144 F. 2d 169, 173. No matter how arbitrary, capricious or biased the action of the Selective Service agencies might be, no relief could be afforded the selectee.

I can see no reason for concluding that Congress did not intend to afford complete protection to the selectee within the framework of the Selective Training and Service Act. Section 11 provides for the trial by the civil authority of any person who violates the Act and who has not been "actually inducted." In the Billings case, as has already been pointed out, the Supreme Court made it clear that the selectee was not subject to military or naval jurisdiction until he underwent whatever "ceremony or requirements of admission" have been prescribed. If the selectee who has not been inducted may not be tried by court martial and must be tried by the civil authority, how can he ever assert denial of due process of law to him unless he can raise it as a defense at his trial? The majority of this court insist that the inducted man may raise the defense on application for writ of *habeas corpus*. Assuming (as I think is not the case) that having voluntarily submitted himself to the naval or military authorities the writ would lie on the inducted man's behalf, the ruling of the majority none the less renders the pertinent provisions of Section 11 meaningless for the statute requires the trial of the alleged delinquent in a criminal proceeding in a district court of the United States. If the defendant in such a proceeding, having exhausted his administrative remedies, cannot question the validity of the order upon which the punitive sanction sought to be applied to him is based, why should Congress require him to be tried in a court where such a defense would be available? Moreover, if the selectee who has not submitted to the military or naval authority cannot raise the defense of denial of due process of law at his trial, he can never raise it. [fol. 310] What has been said does not mean that a selectee may retry his classification on his indictment before

a district court of the United States, or that he may adduce evidence at his trial to prove that he is a regular or ordained minister of religion entitled to exemption pursuant to the provisions of Section 5 (d) of the Act. These courses are prohibited to him. Evidence as to his status, if he claims exemption, must be submitted to his local board. He may offer evidence at his trial as a defense to the indictment that the Selective Service agencies, the local board or the appeal board, arbitrarily or capriciously refused to receive or consider evidence which he endeavored to submit as to his status. He may show by the material within his cover sheet that the local board or the appeal board acted capriciously or arbitrarily in refusing to award him the status of an exempt registrant. He may produce evidence in court that material relevant to his status, timely offered by him, was rejected. He may show that members of the local board or the appeal board are biased, prejudiced or disqualified under the Selective Service Regulations to sit in his case. He may show any or all of these things at his trial as proof that he was denied due process of law by the Selective Service agencies. Beyond this, he may not go.

Whether the selectee has or has not been afforded due process of law by the Selective Service agencies is a question of law for the court and must be determined by it as a legal conclusion though disputed questions of fact of course must be determined by the jury under proper instructions. A pure question of law arose in the case at bar in respect to the letter of July 28, 1944, admittedly sent by the local board to the appeal board. For analogy see United States v. Reckord, 51 F. Supp. at p. 510.[7] Because of the letter [fol. 311] of July 28, 1944 the trial court should have directed a verdict in favor of the defendant. If it were not for what I deem to be the legal effect of the letter, I would conclude that this court should reverse the judgment and remand the cause for a new trial in order that the other questions which I have referred to might be determined

[7] Judge Chestnut stated, "My *conclusion of law* is that the action of the Local Board in intentionally disregarding the applicable regulation and directive and thus including the petitioners in the July quota list was legally arbitrary and capricious; and the petitioners are entitled to be * * * released from custody."

after submission of the rejected evidence. In view of the letter of July 28 it would be futile to order a new trial in the case at bar.

The judgment of conviction should be reversed. A reversal would not exempt defendant from prompt and proper action by the Selective Service agencies.

LEAHY, District Judge, concurring in the dissent:

I fully concur in the dissenting opinion of Judge Biggs that Estep was denied due process. Instead of reversing the judgment of conviction I think a new trial should be ordered.

Estep did not get an opportunity to prove at his trial that he had failed to get due process before the draft boards. It is novel doctrine that a constitutional right depends upon what procedural technic is selected for its protection or that Congress by enactment of the Selective Service Act or any other statute may regulate the protection of any one of the master rights given by the Constitution. Neither am I convinced the Supreme Court has made it law that Estep may only challenge invasion of his constitutional right of due process by submitting to an oath of induction and then applying for a writ of habeas corpus.

When indicted for crime, it is always permissible to bring a plea of constitutional infringement before the trial judge for his critical examination. If this is not so, then protection of constitutional rights must depend upon formalistic considerations of selection of the proper writ or forum where one may tell the story of denial of such [fol. 312] rights. If one compelled to stand criminal trial is not to be permitted to be heard on the *fact* of absence of due process, then the right is illusory. If the Court's views are accepted, Estep has lost his right to demand due process by default because he lacked the ability to distinguish between Falbo v. United States and Billings v. Truesdell. It is my view that the trial judge should have made inquiry upon the proffer of proof to ascertain if Estep did or did not receive due process. This, he failed to do.

A new trial should be ordered.

A true Copy. Teste:

——, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 313] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8810

UNITED STATES OF AMERICA

vs.

WILLIAM MURRAY ESTEP, Appellant

Present: Parker, Biggs, Maris, Goodrich and McLaughlin, Circuit Judges, and Leahy, District Judge

On Appeal from the District Court of the United States for the Western District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Western District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

By the Court, Goodrich, Circuit Judge.

July 6, 1945.

Endorsements: Order Affirming Judgment. Received and Filed Jul. 6, 1945. William P. Rowland, Clerk.

[fol. 314] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendix to Appellant's Brief, as constituting the portions of the record before this court at argument; and proceedings in this court, in the case of United States of America vs. William Murray Estep, Appellant, No. 8810, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 11th day of July in the year of our Lord one thousand

nine hundred and forty-five, and of the Independence of the United States the one hundred and seventieth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 315] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. —

WILLIAM MURRAY ESTEP, Petitioner,

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

STIPULATION

Subject to the approval of the Court, it is hereby stipulated and agreed by the attorneys for the respective parties hereto that, for the purpose of the petition for a writ of certiorari, the printed record shall consist of the following:

1. The separately-bound printed appendix to the appellant's brief in the circuit court of appeals; and
2. The proceedings in the circuit court of appeals.

It is further stipulated and agreed that the petitioner will cause the Clerk of the United States Circuit Court of Appeals for the Third Circuit to certify and file the entire transcript of the record now on file in his office with the Clerk of this Court, and that the petition or briefs in this Court may refer to any portions of the certified typewritten transcript of record which are not included in the printed record to be filed in accordance with this stipulation.

[fol. 316] It is further stipulated and agreed that, in the event the petition for a writ of certiorari is granted, the printed record shall consist of the printed record used for purposes of the petition for a writ of certiorari together with the proceedings in this Court.

Dated July 12, 1945.

Hugh B. Cox, Acting Solicitor General. Hayden C. Covington, Counsel for Petitioner.

[fol. 317] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is set to follow No. 66.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

FILE COPY

No. 292

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

■

WILLIAM MURRAY ESTEP, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

■

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

together with

SUPPORTING BRIEF and APPENDIX

containing

Opinions of Court Below

HAYDEN C. COVINGTON
Attorney for Petitioner

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

■

WILLIAM MURRAY ESTEP, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

■

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

TO THE SUPREME COURT OF THE UNITED STATES:

The petitioner, William Murray Estep, presents this his petition for writ of certiorari and shows unto the Court as follows:

Summary of Matters Involved

1. *Preliminary Statement.*

Although this case arises under Section 11 of the Selective Training and Service Act of 1940, as amended, (50 U. S. C. App. § 311) the questions presented by this petition have neither been decided nor foreclosed by this Court's decision in *Falbo* v. *United States*, 320 U. S. 549, for each and every reason stated in the opinions of the dissenting judges of the court below sitting *en banc*.

2. *Opinion of Court Below.*

The opinion of the United States Circuit Court of Appeals is not yet reported in the Federal Reporter. It

appears in the record certified to this Court ( )[1] The entire opinion and the dissenting opinions appear also as an appendix to this petition.

3. *Statutory Provisions Sustaining Jurisdiction.*

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

4. *Timeliness of this Petition.*

The decision of the Circuit Court of Appeals was entered on July 6, 1945. The judgment of the court below became final on July 6, 1945.

5. *Statutes and Regulations Involved.*

Sections 3 (a), 5 (d), 10 (a) and 11 of the Selective Training and Service Act of 1940, as amended (50 U. S. C. App. §§ 301-318) are drawn in question here, together with Sections 601.5, 615.43 (a), 622.44, 622.51, 623.1, 623.2, 623.21, 623.61, 625.1, 625.2, 626.1, 626.2, 626.3, 627.12, 627.13, 629.1-629.35, 633.2, 633.21, 642.41, and 642.42 of the Selective Service Regulations[2] (32 C. F. R. Supp. 601.5 *et seq.*) promulgated by the President under said Act.

6. *Constitutional Provisions Involved.*

Clause 3 of Section 9 of Article I prohibiting enactment of Bills of Attainder. Clauses 1 to 3 of Section 2 of Article III investing the judicial powers. The Fifth and Sixth Amendments guaranteeing the rights of defendants in criminal prosecutions and securing due process of law.

7. *Questions Presented.*

(1) Does reporting at the induction station pursuant to the order and refusing to submit to induction by stepping forward after acceptance by the armed forces constitute exhaustion of the administrative process so as to qualify petitioner for a defense to the indictment?

(2) Where the undisputed evidence shows that peti-

[1] Figures appearing in parentheses in this petition and the supporting brief refer to pages of the printed transcript of the record.

[2] The Regulations are amended frequently. The sections here set out are as they existed when the facts in controversy took place.

tioner's rights to procedural due process on appeal have been denied him by the local board so as to prevent the appeal board from properly exercising its rights under the Act and regulations, may he show in defense to the indictment that the administrative agency acted illegally and unconstitutionally and that the order on which the indictment was based is void?

(3) May the petitioner who is a minister of religion, exempt from all training and service by provision of the Act, show in defense to the indictment that his constitutional rights have been violated by the board's action in excess of its jurisdiction or authority and contrary to the Act and Regulations?

(4) Did the trial court err in refusing to allow petitioner the right to show, and in refusing the jury the right to consider that the order on which the indictment was based is void because petitioner is a minister of religion exempt from all training and service for the reason that it was made (a) in excess of authority of the boards, (b) beyond the jurisdiction of the boards, (c) contrary to law, (d) contrary to the undisputed evidence, (e) without support of substantial evidence, (f) arbitrarily and capriciously, (g) contrary to the Constitution by depriving petitioner of his rights and liberty without due process of law, and (h) in violation of the Act and Regulations?

(5) Did the trial court err in holding that it and the jury could not consider the illegal and unconstitutional action of the draft boards and in limiting the issue to be decided to whether or not petitioner knowingly failed to submit to induction, as specified in the order to report?

(6) Does the construction placed upon the Act and Regulations by the court below, requiring petitioner to report and submit to induction, and apply for a writ of habeas corpus as a condition precedent to judicial review of the illegality and unconstitutionality of the action by the board, violate Clause 3, Section 9 of Article I, and Article

III, of the United States Constitution and the Fifth and Sixth Amendments thereto?

(7) Did the trial court err in denying petitioner's motion to quash the indictment, motion for an instructed verdict and for a judgment of acquittal, in excluding proffered evidence, and in denying requests for charges, all of which pertained to the illegality of the administrative order?

(8) Did the courts below err in holding that the only method of attack against an illegal and unconstitutional action of the draft boards was by application for writ of habeas corpus?

Statement of Case

FORM OF ACTION

This criminal action was instituted in the court below by return of an indictment charging petitioner with violation of the Selective Training and Service Act of 1940, as amended, and the Regulations thereunder. (1)

The indictment charged that petitioner, a registrant classified for training and service in the armed forces, "did unlawfully, wilfully and knowingly fail and refuse to submit to induction; he, the said defendant, having no valid reason for having failed and refused to perform the duty as aforesaid, in violation of the directions given the said defendant under rules and regulations made pursuant to the Selective Training and Service Act of 1940, as amended." (1)

Thereafter petitioner pleaded "not guilty". (277) Petitioner filed a motion to quash the indictment on the grounds that the construction placed upon the criminal sanctions clause so as to deny him his right to show, in defense to the indictment, that the orders of the draft boards were void and illegal, violated the Constitution of the United States. (2-4, 277) The motion to quash was overruled, after argument to the court, on December 6, 1944. (4, 277) The trial to a jury before the court began on De-

cember 7, 1944. (5, 277) The court excluded and received evidence upon the trial. The case closed when all the evidence was in on December 7, 1944. (113, 278) At the close of the evidence, the petitioner moved for dismissal of the indictment and for a judgment of acquittal (113-116), and for a directed verdict of not guilty. (116-120) In these motions the reasons were stated extensively. (113-120) The motions were denied and exceptions allowed to petitioner. (120-121) Petitioner duly submitted to court, before argument of counsel to the jury, his requested instructions to the jury. (121, 123-145)

On December 8, 1944, the cause was argued to the jury by counsel. (146, 278) Thereupon the court charged the jury. (146-148) The court refused all of petitioner's requested charges to the jury and allowed exceptions to his ruling. (148-149) Petitioner duly objected and excepted to the court's charge. (149-154). The jury retired to consider the verdict at 11:06 am. (154) At 4 pm the jury sent a message to the court that the jurors were hopelessly deadlocked and could not reach a verdict. (154) Thereupon the petitioner waived his constitutional right to a unanimous verdict and agreed to have the issue of his guilt decided by a majority verdict. Counsel for the parties so stipulated which was approved by the court. (154-155) The jury thereupon rendered its verdict of guilty on December 8, 1944. (155-156) Eleven jurors were for conviction, one for acquittal. (156) On December 20, 1944 the United States District Judge rendered judgment upon the verdict of the jury and sentenced petitioner, committing him to the custody of the Attorney General for a period of five years. (160, 249, 278)

Petitioner duly served and filed his written notice of appeal in the time and manner required by law. (250-253, 278) He timely filed his assignments of error which support each ground of this petition. (253-276) In due course the case was argued and submitted to the United States Circuit Court of Appeals for the Third Circuit. It was reargued before six judges of the court sitting *en banc* May 31, 1945.

The judgment of conviction was affirmed by that court on July 6, 1945. ( )

FACTS [3]

The petitioner, now 22 years of age, registered under the Selective Training and Service Act of 1940, on June 30, 1942, with Local Board No. 4 of Washington County, Pennsylvania. (6, 97, 243) He was thereupon assigned order number 11918 by said board. (243) Petitioner timely filed a Selective Service Questionnaire on August 22, 1942, answering the questions required of him. (6, 161-165) In Series VIII he stated he was a minister of religion, did customarily serve as a minister and had been a minister of the Watchtower Bible and Tract Society and Jehovah's witnesses since 1936. (163) He stated that he was ordained as a full-time pioneer minister on October 1, 1941. (163) In said questionnaire he claimed classification of IV-D exempting him as a minister of religion under Section 5 (d) of the Act. (164)

Also filed by Estep was a Special Form for Conscientious Objector properly filled out, which contained additional evidence as to his training for the ministry and his activity as a minister. (194-199) Estep showed that he had attended the Third Ward School at Canonsburg, Pennsylvania, from 1928 to 1935, when he was expelled from said school because of his failure to salute the American flag, contrary to his conscientious convictions. (75, 196) Thereupon he enrolled in the Gates Kingdom School operated by Jehovah's witnesses and located at Gates, Pennsylvania. (196-197) In this school he pursued the regular subjects, generally taught in the public schools, until 1940 when he graduated after successfully completing all courses, including the 12th grade. (77-78) Moreover, he additionally attended the special course of study prescribed by such school

[3] See dissenting opinion, pages 11a to 15a, *infra*, for a more abbreviated statement of the facts.

for the training of young men who desired to prepare for the ministry. He pursued this course from 1935 to 1940. (78) He filed with the local board his own written statement giving details as to his ministerial work, also a sworn certificate of ordination issued by the Watchtower Bible and Tract Society, certifying that he was a full-time pioneer minister and had been acting as such since October 1, 1941. (190-191, 192, 213)

There was no evidence in his file disputing the evidence and claim that he was a duly recognized minister of religion, representing a religious organization known as Jehovah's witnesses and, as its legal governing body, the Watchtower Bible and Tract Society. There was no evidence that the petitioner did not devote substantially all of his time to the performance of his missionary evangelistic work. There was no evidence that he did not fit, as a minister of religion, Opinion No. 14 of National Headquarters of Selective Service concerning ministerial status of Jehovah's witnesses; that he did not stand in relation to Jehovah's witnesses in the same way that the recognized orthodox clergy stand toward their congregations; that he did not perform ceremonies that are ordinarily performed by ministers of religion under the Act. The Report of Physical Examination and Induction (D.S.S. Form 221), Defendant's Exhibit S, under Occupation and Industry, shows that he is a "minister—Perform Missionary and Evangelical services in organizing churches". (160-245)

The local board denied his claim for exemption on October 3, 1942, and placed him in Class I-A, making him liable for training and service in the armed forces. (6, 164) Petitioner filed additional evidence and duly and timely requested a personal appearance, which was granted for October 21, 1942. (98, 99, 193) After such personal appearance the local board continued him in Class I-A. (99, 212) On October 23, 1942, Estep appealed to the board of appeal, asking for classification as a minister exempt from all training and service. (7, 9, 99, 213)

Estep's appeal was taken October 27, 1942. (9) The file was not forwarded from the local board until July 28, 1944. (9) He went to the local board on or about October 27, 1942, and offered to file his written statement of appeal and three affidavits supporting same. (24-25, 99-100, 169-172, 175-181) The local board clerk *falsely* informed him that his file had been forwarded to the board of appeal, when at the time he made the statement he knew that petitioner's file was in the possession of the local board and had not been sent to the board of appeal. (5-17)

The clerk admitted that he lied to defendant for the purpose of depriving him of his right to have his case reopened and to submit the additional evidence to be filed in his Cover Sheet and withholding the same from the Board of Appeal. (15-16)

Sometime after December, 1942, through some irregularity or mistake Estep's Cover Sheet was misplaced or lost by the local board. It was not found until February 1944. (9, 14) Petitioner during this time, relying on the statement of the local board clerk, believed that his file was with the board of appeal. After his file was lost the regulations were amended so as to prevent the file from being forwarded to the board of appeal until the registrant had taken a pre-induction physical examination to determine his physical condition. If his physical examination revealed that he was not fit for service his classification would be changed. (Reg. 627.14) On April 19, 1944, he was ordered to report for preinduction physical examination on April 28, 1944. (101, 220) He complied with such order and was accepted for military training and service and assigned to the Naval Forces. (101, 221) He then learned for the first time since November 1942 that his file was not with and had never been sent to the board of appeal. He then examined his file and found part of the evidence missing. He then obtained eight additional affidavits showing that he had continued his full-time ministry and stood in relation to Jehovah's witnesses the same as do the orthodox clergy of the

recognized religious denominations to their congregations. (101-103) He also obtained copies of the missing documents, placed them with the affidavits the board had refused to accept and place in his Cover Sheet in 1942, and some additional affidavits he obtained in 1944 and, on May 23, 1944 by registered mail, he sent all this proof to the local board, together with a covering letter requesting that they be placed in his Cover Sheet for reconsideration by the local board and forwarded along with his file to the board of appeal. (101-103) At that time his file was still with the local board, and was not forwarded to the board of appeal until July 28, 1944. (9, 222) However, the local board declined to reopen his case and did not place the additional evidence received from the petitioner by registered mail on or about May 23, 1944, in his Cover Sheet, and did not forward the same to the board of appeal. (11, 15-16) Although these documents were in the possession of the local board, they were never seen by the board of appeal, the State Headquarters or the National Headquarters of Selective Service System. (11-12)

The local board prepared and filed its written arguments against the case of petitioner with the board of appeal contrary to the Regulations. (29, 29-30, 58-59, 223) This letter from the local board was considered by the board of appeal, and the classification of 1-A was given largely because of the misleading and prejudicial statements made by the local board to the board of appeal. (63) On August 28, 1944, the board of appeal, not considering the evidence rejected by the Local Board, classified petetioner in Class 1-A making him liable for training and service in the armed forces. (7, 103, 165)

It was offered to be proved by the chairman of the local board that the local board withheld from the consideration of the board of appeal this additional evidence. (57-58) It was offered to be shown by the chairman of the board of appeal that if the local board had included this evidence in the file it would have been considered by the board of appeal

with a different result in the classification of petitioner. (63) Both offers were rejected by the trial court.

The Pennsylvania State Headquarters of Selective Service requested additional information as to Estep's ministerial activity, even after the board of appeal had affirmed the action of the local board. The local board, in compliance with this request, took a short statement from petitioner and refused to send up the voluminous amount of evidence which it had previously refused and withheld from the board of appeal. (226-227) (See comment of the State Headquarters as to the illegality of the action of the local board in this connection. (228) Moreover, it should be observed that the local board placed additional information in Estep's file after his 1942 appeal had been taken, which information was the prejudicial, anonymous letter with newspaper clipping attached. (218-219) Those two papers were placed in the file after the board had turned down Estep's request made in October 1942 to add *his* additional evidence.

Estep communicated with the Pennsylvania and National Headquarters of Selective Service requesting review of his file and an appeal to the President of the United States in his behalf. (103, 229-231) This was declined. (232-233) Petitioner received a notice to report for induction on September 11, 1944. (8, 165-166) He reported for induction on such date as directed. (8, 31, 103) He was sent by the local board to the induction station at the Old Post Office Building in Pittsburgh. (103-104) He arrived there on September 11, 1944 at 9 am. He was questioned as to his occupation and background. (104) He informed the woman clerk, who recorded his replies, that he was a full-time ordained minister of the gospel and missionary evangelist, preaching from house to house as did Christ Jesus and the apostles, that he would obey all the laws of the land consistent with God's law. (104-105) He was then questioned by doctors who gave him a physical examination, upon completion of which he was again declared physically and

mentally fit for training and service and his acceptance of April 1944 confirmed. (105-106) One of the doctors attempted to persuade him to submit to induction and obtain a commission as a chaplain in the Navy. (105-106) He informed the doctor that Jehovah's witnesses were ambassadors of God's Theocratic Government, requiring them to be strictly neutral. He said he was a soldier in the army of Christ, wearing the uniform of Christ Jesus and using the weapons Christ Jesus had prescribed, namely, the 'sword of the spirit, which is the word of God' (105-106), and that it was impossible for him to serve in two armies at the same time. (105) He was then requested by an officer to state what branch of the Navy he cared to go into. He declined to make a choice, explaining again that he was an ordained minister, exempt from all training and service and not required to choose. (105) He informed the officer that his entire time and energy was devoted to the proclamation of the Theocratic Kingdom in order that all people of goodwill might learn of God's provision for them to gain everlasting life on earth. (106) He was then directed to leave the induction station and return the next day. (106-107) He left at 2:30 pm, September 11, and the next morning returned to the place at the time instructed. (106-107) He refused to sign an oath that obligated him to submit to the command of the Commander-in-Chief of the armed forces of the United States, explaining that he was an ordained minister not subject to training and service in the armed forces and that the draft boards had violated the law, rather than he, that the draft board had required him to do an act which would cause him to break his covenant with Almighty God, resulting in his everlasting destruction. Estep said he told the officer that since no representative of the United States government could grant him a pardon from the punishment of everlasting death prescribed by Almighty God for him if he should break his covenant, likewise no representative of the government had authority to force him to perform an act which would result in break-

ing his covenant and everlasting death. (107-108) The officer told him that the easiest way out of the difficulty would be to go ahead and be inducted. Petitioner replied that he was not looking for the easiest way out because he was a footstep follower of Christ Jesus who admonished that all His true followers would be hated of all nations, persecuted, mistreated, imprisoned and many even killed for maintaining their integrity and thus be required to face the toughest way. (107-108) Thereupon the officer referred petitioner to Lt. Commander Elmer B. Keckler of the United States Navy, commanding officer of the Navy Recruiting and Induction station at Pittsburgh. (32-33, 107-108) He was taken before Commander Keckler who, in the presence of Chief Electrician Mate E. L. Tissue, asked petitioner what it was all about. Keckler asked Estep to sign a statement and Estep told him that he had submitted to Keckler a letter of explanation which was complete and a written record of his purpose in appearing. Keckler received the letter. (32-38, 108-109) After Estep explained why he could not submit to induction, Keckler again requested him to sign a statement and Estep again refused. (32-35, 109) Keckler sent Tissue out of the office to look for several witnesses to the refusal of petitioner to submit to induction and to refuse to sign the statement. While Tissue was gone, petitioner explained fully to Keckler the work of Jehovah's witnesses and that he was doing a work of great national importance, that he was telling the people of the Kingdom of Christ Jesus, a Theocratic Government that would be ruled by Jehovah God through his Son Christ Jesus, who would have visible representatives on the earth as princes, namely, the faithful men of old recorded in Hebrews chapter 11, who would be resurrected and brought back to earth, that all the present governments of the earth under the bondage of the greatest dictator of all times, Satan the devil, would be destroyed at the battle of Armageddon at the hands of Christ Jesus. Estep informed him that before this battle began it was necessary that the

people be warned and that he was engaged in that warning work by carrying the Gospel message of the Kingdom as a missionary evangelist to the people at their homes. (110-112) Tissue returned with the witnesses who signed the statement that petitioner refused to submit to induction after being requested to go through the induction ceremony by stepping forward and taking the oath. (110-112) The officer's statement appears in the record. (242) This the petitioner admitted he refused to do. (111)

In his letter to the commanding officer, copy of which he had filed with the local board, he stated that he was reporting because the law required him to do so; that he was an ordained minister of the Gospel, exempted from all duty but willing to obey all the laws of the United States that are in harmony with the law of God and which would not require him to give up his ministry; that the undisputed evidence showed that he was a minister of religion within the meaning of Section 5 (d) of the Act, exempt from military training and service; that the local and appeal boards violated the law in denying him the exemption; therefore the armed forces did not have authority to require him to submit to induction. (38-39, 239-240)

After his refusal to submit to induction was properly witnessed, petitioner was directed to leave the induction station. (111-112) He returned to his home and was thereafter arrested, charged and indicted for alleged violation of the Selective Training and Service Act, as aforesaid. (112)

The draft board file, including the questionnaire, showed that petitioner was a minister and conscientiously opposed to combatant and non-combatant military service, and was properly entitled to exemption and classification as an ordained minister in Class IV-D and that the boards had acted capriciously and arbitrarily in classifying him in Class I-A over his objection, and had no jurisdiction to order him to submit to induction by taking the oath. (161-165, 190, 192, 194-199, 200-230)

There is no written proof or evidence reduced to writing which shows that petitioner was not recognized, authorized or ordained by the Watchtower Bible and Tract Society and Jehovah's witnesses. (161-230) There was no evidence that he did not devote substantially all his time to the regular performance of ministerial duties in behalf of said organization. There was no evidence that he did not perform the religious ceremonies and duties. There was no evidence that the Watchtower Bible and Tract Society did not recognize petitioner as standing in relation to it as do the ministers of the orthodox religious organizations. (161-230) There was no evidence that petitioner did not follow this profession, devote his time and preach at all times shown in his papers before the board and in the manner described by him therein. There was no written evidence in the file disputing the facts stated by him in Series VIII of the questionnaire and in the other documents filed with the board in reference to his ministerial activity. There was no evidence in the file in writing which showed that petitioner falsified his claim as a minister or that he falsely impersonated a duly recognized minister of the recognized religious organization known as Jehovah's witnesses. (161-230)

How Issues Were Raised

By motion to quash the indictment petitioner claimed that the administrative process had been sufficiently completed so as to permit him to challenge the legality of the classification and orders based thereon. (2-4) He asserted that if the Act and Regulations were so construed as to deny him these defenses, they were unconstitutional because a Bill of Attainder, contrary to Clause 3, Section 9 of Article I of the United States Constitution; because they surrendered the judicial power to the draft boards contrary to Article III of the Constitution; because they denied the right to a judicial trial contrary to the due process

clause of the Fifth Amendment to the United States Constitution; because they deprived the petitioner of his right of trial by jury contrary to the Sixth Amendment to the United States Constitution. (2-4, 277) The trial court overruled the motion to quash with exception to petitioner. (4, 277)

Upon cross-examination of government witness McNutt, clerk of the local board, the petitioner attempted to prove that McNutt, acting for the local board, lied to petitioner by stating that his file was with the board of appeal, for the purpose of denying petitioner his right to present additional evidence for a reconsideration by the local board of petitioner's case and for consideration by the board of appeal, and that this was a conspiracy on the part of the local board and McNutt to deprive petitioner of his constitutional rights to have a full and fair hearing before the administrative agency. (11, 16-21) The court held that petitioner did not have the right to challenge the legality of the classification and orders because he did not comply with the order of the armed forces to submit to induction. (20) Petitioner excepted to this ruling and the remarks of the court. (21)

Upon cross-examination of government witness McNutt, petitioner attempted to show that the additional documentary evidence which he offered in May 1944 to the local board for its consideration and to be placed in his Cover Sheet for forwarding to the board of appeal was unlawfully and fraudulently withheld from the board of appeal by the clerk and members of the local board as part of a conspiracy to deprive petitioner of his procedural rights under the Act, the Regulations and the due process clause of the Fifth Amendment to the United States Constitution. (24-29) The court held that unlawful and unconstitutional acts of the draft boards were not subject to judicial review in defense to the indictment charging petitioner with refusal to submit to induction. The court declared that the only issue to be decided by the jury was whether or not peti-

tioner refused to submit to induction. (27, 29) Petitioner excepted to this holding on the ground that it abridged his constitutional rights and placed a construction upon the Act and Regulations that made them contrary to the United States Constitution, for each of the reasons specified in the motion to quash. (27, 29)

The trial court also excluded from evidence over the objection of petitioner the testimony of petitioner's witness, Thomas M. Reese, chairman of the local board. If permitted to testify Reese would have said that all the evidence reduced to writing in petitioner's file showed that petitioner was a duly recognized missionary evangelistic minister of the Watchtower Bible and Tract Society and Jehovah's witnesses, a recognized religious organization under the Act; that petitioner devoted substantially his entire time to the performance of such preaching and had no occupation other than minister of the Gospel; that there was no evidence in the file disputing petitioner's claim as a missionary evangelist, representing the Watchtower Bible and Tract Society; that petitioner did not fictitiously claim exemption as a minister; that the local board could not point out from the file where petitioner did not fit Opinion No. 14 of the National Headquarters concerning classification of Jehovah's witnesses as ministers of religion under the Act and Regulations; that the local board wrote a letter expressing its opinion to the board of appeal, contrary to the Regulations, in violation of the procedural rights of petitioner, that in such letter the board of appeal was advised that petitioner should not be classified in IV-D because his name did not appear on the certified official list of ministers of Jehovah's witnesses filed with State Headquarters and that the statement in the letter that petitioner devoted only three days weekly to the performance of his missionary duties was not supported by written evidence in the file; that the local board unlawfully withheld from the petitioner's file documentary evidence appearing in defendant's Exhibit A and had declined to re-

open and consider anew petitioner's classification and had unlawfully withheld the documentary evidence from consideration by the board of appeal in violation of the Selective Service Regulations and the due process clause of the Fifth Amendment to the United States Constitution. (55-59, 167-189)

The trial court erroneously excluded from evidence, over the objection of petitioner, testimony of petitioner's witness, Frank A. Pireaux, chairman of the board of appeal. (61) If permitted to testify Pireaux would have said that the board of appeal considered only the evidence reduced to writing in the petitioner's file, which showed that the Watchtower Bible and Tract Society was a recognized religious organization under the Act; that petitioner was a regular minister of that Society from 1936 to 1944; that there was no evidence to dispute petitioner's claim that he was devoting substantially his full time to the performance of his work as a missionary evangelist; that the board of appeal did not find that petitioner fictitiously claimed to be a minister of the Watchtower Bible and Tract Society; that the only reason the board of appeal did not classify petitioner as a minister of religion was because his name did not appear on the official certified list on file at State Headquarters of Selective Service; that the board of appeal considered the letter written by the local board to the effect that petitioner should not be classified as a minister because his name did not appear on such certified list; that they were persuaded by the false statement of the local board that petitioner devoted only three days weekly to his ministry; that the board of appeal did not consider the affidavits and documentary proof offered by the petitioner, appearing in Exhibit A, because they were not forwarded to the board of appeal by the local board; and that if the board of appeal had considered the documentary evidence appearing in Exhibit A, they would have reached a different conclusion and found that petitioner was exempt

from all training and service as a minister of religion. (61-66, 167-189)

The trial court erroneously excluded from evidence Defendant's Exhibit "A" which contained several documents proving the ministerial status and full-time evangelistic missionary work done by petitioner. Some of these documents were offered to the local board in 1942. The local board at that time illegally refused to receive them and consider them or to reopen the case, falsely stating to petitioner that the file was in the hands of the board of appeal. Additional documentary proof was prepared in 1944 added to these documents and mailed to the local board before Estep's file was forwarded to the board of appeal so the board could reopen the case, file the evidence in the Cover Sheet, and forward the same to the board of appeal. The local board illegally and unlawfully refused to place the evidence in the file and fraudulently withheld the same from the board of appeal, contrary to the Regulations and in violation of procedural rights of the petitioner guaranteed by the due process clause of the Fifth Amendment to the United States Constitution. (10-11, 24, 50-52, 167-189) This evidence was objected to by the Government and the court sustained the objection with exception to petitioner. (24, 52)

The trial court erroneously excluded from evidence Defendant's Exhibit J, an anonymous note to the local board to which was attached a newspaper clipping concerning the sentence of Nick Falbo, the writer requesting the board to take similar action against Estep. This additional information was placed in the petitioner's Cover Sheet in December 1942, by the local board after the appeal was taken, and after refusing to receive additional evidence tendered by Estep. It was offered for the purpose of showing that petitioner had been denied his procedural rights by placing prejudicial information in his file which was not evidence as to his ministerial status. (15, 18, 218-219) The court sustained the objection of the Government with exception

to petitioner. (48)

The trial court erroneously excluded from evidence, with exception to petitioner, the testimony of petitioner's witness, Charles R. Hessler, a full-time district superintendent and minister of Jehovah's witnesses and the Watchtower Bible and Tract Society connected with the organization since 1917. Hessler would have testified that he had under his supervision as presiding minister in the district of Pittsburgh, the congregations located in Allegheny and Washington counties; that he became acquainted with petitioner, William Murray Estep, in 1936; that Estep enrolled as a student in the advanced course of ministry in the divinity school conducted by Jehovah's witnesses at Pittsburgh and later in Washington county, attending three nights weekly; that he was president of a religious corporation organized to operate a school to provide education for young "witnesses" excluded from public school for failing to salute the American flag, which school also provided a regular course of study for the purpose of training and preparing young men for the ministry; that Estep regularly attended this school, pursuing the regular course and the special ministry training course from 1936 to 1940 when he graduated after successfully completing the prescribed courses of study; that he personally authorized petitioner to preach as a part-time minister in 1936 while continuing his course of study in preparation for his full-time ministry; that since 1940 he had seen Estep grow from a part-time to a full-time minister; that Estep stands in the same relation to Jehovah's witnesses as do the orthodox clergy toward its denominations; that he knows that Estep is authorized to perform burial, baptismal and other ceremonies; that Estep has regularly served in the capacity of a full-time pioneer and evangelistic minister since October 1941. (67-71) This evidence was offered for the purpose of a *de novo* consideration of the court upon the issue of exemption of the petitioner from training and service under the Act, and to establish that the administrative agency

had no authority to order the petitioner to submit to induction into the armed forces and that petitioner had been deprived of his constitutional rights contrary to the Fifth Amendment to the United States Constitution. (71-72) This evidence was excluded with exception to petitioner. (72-73)

Similar offers of proof were made in connection with the testimony of petitioner's witnesses Stewart, McKnight, Singer and Ferree. (73) These offers of proof were made for the same purpose as the offer of proof in connection with the testimony of Charles R. Hessler. (73) These offers of proof were excluded for the same reasons. (74) Exceptions were allowed to the petitioner for the exclusions. (74)

The trial court erroneously excluded from evidence the testimony of the petitioner, William Murray Estep, as to his plans to become a minister at a very early age; the instruction he received at home from his parents in preparation for the ministry; his enrolling in the Watchtower Divinity School at an early age; his regular attendance at such school with his parents; that after becoming qualified to teach and preach in 1936 he began to preach part time from house to house; that while pursuing his part-time ministry he regularly attended the Gates Kingdom School which provided instruction in the regular public school subjects from the first to the twelfth grade and also a special course for the preparation of young men for the ministry; that he attended this Kingdom School from 1936 to May 1940; that shortly following his graduation he became assistant to the presiding minister of the Washington, Pennsylvania, congregation of Jehovah's witnesses and thereafter devoted a large part of his time to preaching as a missionary evangelist; that in October 1941 he undertook his full-time pioneer evangelistic missionary work and also continued to act as assistant to the presiding minister of the Washington congregation of Jehovah's witnesses, devoting an average of more than 150 hours monthly to actual

preaching in addition to time required for daily study and preparation for carrying on his ministerial duties; that thereafter in the performance of his full-time ministerial duties, he was transferred by the legal governing body of Jehovah's witnesses, the Watchtower Bible and Tract Society, to serve in ministerial capacities in New York City, Uniontown, Pennsylvania and Akron, Ohio; that his duties consisted of calling from house to house as did Christ Jesus and his apostles, publicly preaching upon the streets by distribution of *Watchtower* and *Consolation* magazines, by calling back on interested persons and answering Bible questions, by establishing and conducting studies in the Bible and Bible helps in the homes of the people and by regularly delivering Bible sermons to congregations of Jehovah's witneses at least once weekly. (78-97) This evidence was offered for the purpose of a *de novo* consideration of the court upon the issue of exemption of petitioner from training and service under the Act, and to establish that the administrative agency had no authority to order petitioner to submit to induction into the armed forces and that petitioner had been deprived of his constitutional rights contrary to the Fifth Amendment to the United States Constitution. (74, 97) This offer of proof was objected to by the Government. (78, 97) The court sustained the objection, excluded the evidence, with exception to petitioner. (97)

The trial court erroneously excluded from evidence Defendant's Exhibit C, petitioner's certificate of ordination with accompanying documentary evidence (12, 45, 192); Defendant's Exhibit D, a written request of petitioner for a personal appearance before the local board, together with documentary evidence (13, 46, 193); Defendant's Exhibit F, a transcript of the proceedings at the personal appearance on October 21, 1942 (13, 47, 200-211); and Defendant's Exhibit N, a letter from petitioner to the local board dated August 21, 1942 (21, 49, 224), all of which documentary evidence was duly filed with the local board and

made a part of the Cover Sheet and duly considered by the local board and board of appeal upon a determination of Estep's claim for exemption from training and service under the Act and Regulations. This evidence rejected by the court (45, 46, 47, 49) showed that petitioner was at all times a minister of religion; that there was no credible evidence or substantial evidence before the administrative agency which disputed Estep's evidence that he was a duly recognized minister of the Watchtower Bible and Tract Society and Jehovah's witnesses; that the action of the administrative agency was contrary to law, without support of substantial evidence, arbitrary and capricious, contrary to the Act and Regulations, in excess of authority and in violation of the due process clause of the Fifth Amendment to the United States Constitution. (192, 193, 200, 224)

At the close of the evidence petitioner moved for a dismissal of the indictment (113-115) and for a directed verdict (116-120) on the grounds that the undisputed evidence showed that the draft board order was void because the board acted in excess of its authority in that petitioner was a minister of religion exempt from all training and service and was not liable for training and service under the Act; that he had exhausted his administrative remedies and was in a position to challenge the action of the administrative agency and the orders on which the indictment was based; that the board had denied him his rights of procedural due process by rejecting the evidence and that the court had construed the Act and Regulations so as to require a registrant to submit to induction as a condition precedent to a judicial review, which denies the petitioner the right of a judicial trial contrary to the Constitution of the United States. (113-120) Each motion was denied with exception to petitioner. (120-121)

Petitioner duly tendered to the court requested charges to the jury. (123-145) The requested charges defined what constituted a regular or duly ordained minister of religion (123, 123-124, 124-135), stated the duties of draft boards in

considering the ministerial status of Jehovah's witnesses under the Act and Regulations as declared by the Director of Selective Service in Opinion No. 14. (135-136, 139-141) The court was requested to charge the jury that if they concluded and found that the undisputed evidence before the draft boards showed that petitioner was a minister of religion and of Jehovah's witnesses (136-138) and there was no substantial evidence that he was not such a minister as claimed (138), that they could aquit the petitioner by their verdict saying he was not guilty. (136-138) The court was requested to charge the jury that if they found that the boards acted in excess of authority, without jurisdiction, contrary to law, without support of substantial evidence, contrary to the undisputed evidence, contrary to the Constitution, the Act and Regulations and arbitrarily or capriciously, they could render a verdict of not guilty. (135-140) These requests were each refused separately and exception allowed to each refusal. (148-149)

The court instructed the jury that the classifications made by the draft boards were final and binding upon the court and jury and could not be questioned, that the only issue to be determined was whether or not the petitioner submitted to induction, that if the evidence showed that petitioner failed to submit to induction, it would be the duty of the jury to find the petitioner guilty. (147) The court charged the jury that they could not say whether or not the petitioner was a minister of religion, that the jury must find him to be a registrant liable for training and service, that at this trial was no place or time to review the correctness of the action of the draft boards. (147, 148) The court told the jury that the court and jury had no power to review the action of the draft boards but that such action must be accepted as conclusive. (147, 148) Petitioner objected and excepted to these portions of the court's charge on the grounds that he was thereby denied the right to urge in defense to the indictment that he was exempt from training and service as a minister of religion; that the

court instructed the jury to convict him; that the instruction of the court denied him his right to a judicial trial and a trial by jury, and abridged his rights and liberty contrary to the due process clause of the Fifth Amendment to the United States Constitution. (149-154) Moreover, the court's charge was objected to on the grounds that the holding that petitioner must submit to induction as a condition precedent to challenging the legality of the action of the administrative agency converted the Act and Regulation into a Bill of Attainder contrary to the United States Constitution. (152)

Throughout the trial, from beginning to end, the court held that the actions of the draft boards were binding upon petitioner, the court and the jury, and that petitioner could not challenge the same on any ground, or that his failure to submit to induction was not a wilful violation of the Act.

Specification of Errors

Petitioner relies upon every one of his assignments of error as grounds for a reversal of the conviction.

Reasons Relied on for Granting the Writ

Where the undisputed evidence shows that a Selective Service registrant has been deprived of his procedural rights upon appeal and there is not a scintilla of evidence showing that he has been afforded due process of law, then the administrative action is concededly contrary to the Act and Regulations so as to make void and illegal an order directing petitioner to submit to induction, because such action of the draft boards violates the due process clause of the Fifth Amendment to the United States Constitution. The issuance to the petitioner of the order upon which the indictment was based violated the due process clause. This case shows that petitioner did not have a fair and full hearing before the administrative agency and was denied

his rights on appeal to the board of appeal. Thereby more is proved in this case than that the decision of the administrative agency was wrong. The holding of the court below, therefore, departs from the principle of an applicable decision of this Court relative to judicial review of administrative action. *Bridges* v. *Wixon*, No. 788, October Term 1944, decided June 18, 1945, 13 L. W. 4554, 4558. Moreover, in holding that such illegal violation of the due process clause cannot be considered by the courts in determining whether or not the administrative action is illegal, the court below has rendered a decision in conflict with the decision of the United States Circuit Court of Appeals for the First Circuit on the same matter. *Tung* v. *United States*, 142 F. 2d 919.

The *Tung* decision is attempted to be distinguished by the majority opinion of the court below on the ground that Tung had not abandoned his administrative remedies but was attempting to pursue them. This effort on the part of the court below proves all the more that *its* decision in the instant case is in direct conflict with the *Tung* decision of the First Circuit! *The undisputed evidence shows that Estep had not abandoned the administrative remedies.* Indeed, he was attempting to invoke them as did Tung! The local board defiantly refused to follow the Regulations and deprived him of his right of appeal in the same way as did the board in the *Tung* case. Cf. *United States* v. *Peterson* (USDC N. Dist. Calif. 53 F. Supp. 760), *United States* v. *Lair* (USDC N. Dist. Calif. 52 F. Supp. 393).

Although there is no direct holding by this Court that one who exhausts administrative remedies by reporting for induction and is ordered to submit to induction may challenge the order, the holding of the court below conflicts with the dicta of this Court in *Falbo* v. *United States* (320 U. S. 549, 553) and *Billings* v. *Truesdell* (321 U. S. 542, 558-559) and is such a drastic departure from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision to halt the same and correct

the injustice committed against petitioner. See dissenting opinions ( ) Appendix, pages 21a-30a, *infra*.

Moreover, assuming that there is no conflict between the holding of the court below and other decisions of the Federal Courts, the question as to when, where and "how a registrant could raise as a defense to an induction order of his local board a failure to accord him the rights guaranteed to him under the Act, such failure in itself constituting a denial of due process of law" (*United States* v. *Pitt*, CCA-3, 144 F. 2d 169) is a very important question of federal law which should be settled by this Court. Inasmuch as it has not been settled, the writ of certiorari should be granted as requested in this petition.

There are other reasons why the petition in this case should be granted. There is confusion in the law as to when, where and how one charged with a violation of the Act may challenge the legality of an administrative order made contrary to the due process clause. The doubt is due to the failure of the Court to go beyond the narrow question presented in the *Falbo* case and clearly define the rights of parties complaining of administrative action under the Act. If a registrant can make no defense of the illegality of an administrative order upon which an indictment is based and if habeas corpus is the only remedy to test the validity of an order, which contentions the Government makes, then this Court should say so. No longer should the question remain in darkness as it was left in the *Falbo* case. Moreover, the language of the *Billings* opinion (321 U. S. 542, at pages 557-558) indicates that a registrant who has exhausted his administrative remedies, but who refuses to comply with the order by submitting to induction, may challenge the invalidity of the draft board order. In the *Billings* case this Court said that if a registrant who reports to exhaust his remedies is forced to comply with the order it would make a "trap" of the *Falbo* decision.

What was the "trap" which the Court spoke of in the *Billings* opinion? Inexorably, it appears to be submission to

induction as a condition precedent to judicial review after completion of the selective process which is the "trap" there mentioned. Indeed, if it is not, then he who appears to exhaust his remedies is as bad off as, if not worse off than, he who stays away entirely. (Cf. *Ex parte Young*, 209 U. S. 123, 147; *Wadley Sou. Ry.* v. *Georgia*, 235 U. S. 651, 660-663; *Oklahoma Operating Co.* v. *Love*, 252 U. S. 331.)

If this dictum in the *Billings* opinion was loose language, or if the Court inadvertently said what it did not intend to say, then the language ought to be promptly repudiated or otherwise clarified so that it will not continue to be dangled before the desperate registrant fighting for his liberty in defense to an indictment based on an illegal draft board order. If it is the law of the land that, in criminal prosecutions under the Act, the courts must follow the draft boards who refuse to follow the law, defy the Act and violate the constitutional rights of registrants, it is high time that the lower courts and the registrants be unmistakably notified so that they will know where they stand under the Act and Regulations. If the time has come in the field of administrative law that there is government only by men and not by law, the people are entitled to hear this Court say that such time has arrived.

Moreover, the instant case presents to this Court a question similar to that involved in *Giese* v. *United States*, — U. S. App. D. C. —, 143 F. 2d 633, and which was not settled by the *per curiam* opinion of the equally divided court in the same case reported at 323 U. S. 682. Since the petition for writ of certiorari was granted in the *Giese* case, it should be granted in this case. Inasmuch as questions were sufficiently substantial to require argument and cause a divided court in the *Giese* case, the questions here presented should be likewise and for the same reasons considered substantial enough to warrant the granting of the writ of certiorari. The decision of this Court in the *Giese* case (323 U. S. 682) is not a precedent because it was an opinion by a divided court.

Conclusion

WHEREFORE your petitioner prays that this Court issue a writ of certiorari to the Circuit Court of Appeals for the Third Circuit directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the judgment of said Circuit Court of Appeals, affirming the judgment of conviction entered by the District Court be here set aside and petitioner dismissed from custody or, in the alternative, the judgment be reversed and the cause remanded for a new trial not inconsistent with this Court's opinion; and that your petitioner be granted such other and further relief in the premises as to this Court may seem just and proper in the circumstances.

WILLIAM MURRAY ESTEP, *Petitioner*

By HAYDEN C. COVINGTON

Counsel for Petitioner

SUPPORTING BRIEF

Preliminary

For a statement as to the opinion of the court below, the basis on which the jurisdiction of this Court is claimed, the questions presented, the history of the action, how the issues were raised, the evidence received and rejected and the assignments of error relied upon, reference is here made to the foregoing petition for writ of certiorari.

The points of law pertaining to the right of the petitioner to show in defense to the indictment that the administrative order is void because the selective process has ended, thus completing the administrative remedies, have been fully discussed in *Rinko* v. *United States*, No. 1071, October Term 1944. See Petition for Writ of Certiorari, pages 25-34, incorporated herein by reference as though copied at length herein.

ADDITIONAL ARGUMENT

A

RIGHT TO DEFEND

The court below said that *Falbo* v. *United States* (320 U. S. 549) adopted the view that the only right of review of an illegal draft board order was by habeas corpus after induction. It is significant that the court below does not quote any such language in the *Falbo* opinion which could fairly justify this inference. This Court did not so hold in the *Falbo* case. Indeed, it has not yet been held by this Court that the only right of review of illegal draft orders is by habeas corpus as indicated.[4]

Whether petitioner has sufficiently completed his administrative remedies so as to qualify for judicial review of

[4] The view here taken by petitioner that he is entitled to defend to the indictment is fully supported by the dissenting opinion of Judge Biggs, concurred in by Judge Leahy. Reference is here made to the cogent dissenting opinion of Judge Biggs ( ) See Appendix, pp. 21a-29a, *infra*.

the illegality of the administrative order is an open question before the Court. A criminal case where a registrant has completely exhausted his administrative remedies, as Estep did, has never been decided by this Court. However, on May 28, 1945, the Court granted certiorari (65 S. Ct. 1406) in the case of *Smith* v. *United States*, 148 F. 2d 288 (CCA-4). The *Smith* case calls upon the Court to decide whether one who refuses to submit to induction may defend against the indictment on the ground that he has been erroneously classified by his local board. It does not present a situation where there has been a violation of the procedural rights of a registrant under the Act and Regulations contrary to the due process clause, as is here presented. Here the action of the agency is contrary to law.

Although the *Smith* case, in which certiorari has been granted, involved an indictment which charged Smith with failure to *report* for induction, it cannot be distinguished from the facts in this case. In that case the registrant appeared at the induction station, was examined by the armed forces and accepted for military service. It was then claimed that he was in the army, despite the fact that he had refused to submit to the induction ceremony. He was thereafter released on a writ of habeas corpus on the authority of the *Billings* decision. The district court and circuit court of appeals held in the *Smith* case that he failed to report for induction because he did not appear at the induction station with the intent of being inducted but merely appeared and defied the armed forces and refused to be inducted. It was held that such appearance constituted a failure to report for induction. Nevertheless the undisputed facts showed that he completed the selective process and was entitled to challenge the legality of the administrative order regardless of the type of indictment under which he was put to trial. In that respect the case at bar presents the same question as does the *Smith* case. The fact that the same question is before the Court in the *Smith* case is suggested as ground for granting certiorari in this case.

It is said that the decision in *Rinko* v. *United States*, 147 F. 2d 1 (CCA-7) (certiorari denied 65 S. Ct. 1086, petition for rehearing denied 65 S. Ct. 1402), disposes of the question presented here. Denial of certiorari imports no opinion by the Court upon the merits of the case. *House* v. *Mayo*, decided February 5, 1945, 65 S. Ct. 518, 521; *Hamilton-Brown Shoe Co.* v. *Wolf Brothers*, 240 U. S. 251, 258. Denial of the petition for writ of certiorari in the *Rinko* case, viewed with the granting of the writ in the *Smith* case, can be accounted for only upon the assumption that this Court accepted the Government's argument in the *Rinko* case that Rinko had not completed the selective process by his stepping out of the line at the induction center before he reached the oath-administration ceremony. See Brief for the United States in Opposition, No. 1071, *Rinko* v. United States, October Term 1944, pages 8 and 10.

The Government's own argument as ground for denial of certiorari in the *Rinko* case is adopted as the distinction of the *Rinko* case from the *Smith* case and the *Estep* case.

The court below relied on *Goodrich* v. *United States*, 146 F. 2d 355 (CCA-5); *United States* v. *Flakowicz*, 146 F. 2d 874 (CCA-2); *Klopp* v. *United States*, 148 F. 2d 659 (CCA-6) and other cases. All these cases can be distinguished from both the *Smith* and *Estep* cases on the ground that none of the registrants there involved went to the end of the selective process. Each failed to appear at the induction station. None went as far as did Estep or Smith. If they had gone to the induction station and completed the selective process to the point of the induction ceremony, as did Smith and Estep, as suggested in *Falbo* v. *United States*, *supra*, they would have stood in the same position as do Smith and Estep. For these obvious reasons those cases are distinguishable.

Also the court below cited a large number of decisions by various circuit courts of appeals in cases where the respective defendants failed to report for induction and in which the facts were identical with the *Falbo* case on the

question of failure to complete the selective process. In the *Falbo* case, relied on by the court below, as well as in the other cases relied on, the registrant did not complete the "connected series of steps into the national service which begins with registration" and which "does not end until the registrant is accepted by the army, navy, or civilian public service camp." (*Falbo* v. *United States*, 320 U. S. 549, 553) In other words, these registrants did not go to the 'end of the administrative rope' as did Smith and Estep. Such cases cited by the court below fall within the *Falbo* rule and cannot be distinguished from the decision in that case. They are not authority for the decision of the court below.

The concurring opinion of Mr. Justice Douglas in *Hirabayashi* v. *United States*, 320 U. S. 81, 108, 109, relied on by the court below, throws no light on the holding in the *Falbo* and *Billings* cases which were decided long after the *Hirabayashi* case. Moreover, the recognition of the line of decisions holding habeas corpus after induction as the only remedy does not constitute an approval thereof. The argument that habeas corpus after induction is the only remedy is based on the decisions of cases arising under the 1917 Act which was essentially different from the 1940 Act. The very purpose of the Bone amendment to the 1940 Act was to keep registrants with claims for exemption and controversies with draft boards, and who desired to test the illegality of the action of the boards, entirely out of the armed forces. History under the 1917 Act shows habeas corpus frustrated training.

The decision in *Yakus* v. *United States*, 321 U. S. 414, 427-430, relied upon by the Government in the court below as supporting its contention that submission to induction is required to complete all "administrative remedies" by applying for a writ of habeas corpus, is distinguishable. There it was provided in the Act that one dissatisfied with an OPA ruling could appeal to the Emergency Court. Here the Act contains no such provision and since habeas corpus is a judicial remedy and is not provided for in the Act as

an "administrative" remedy it cannot be argued that the *Yakus* decision is in point. Naturally, if the Act provided for the registrant to appeal to the Emergency Court after appealing to the highest official in the Selective Service System, he must exhaust such remedies. There is no such remedy available here and the *Yakus* decision can be put aside as inapplicable.

The Government challenged petitioner's statement that habeas corpus is an illusory remedy. Although habeas corpus may be available to one wrongfully inducted, it is not the only remedy and may become entirely inadequate. For instance, after one is inducted he may be moved by the armed forces immediately to a point thousands of miles away from the place where his draft board and friends are located, for the purpose of being given military training, before he can apply for a writ of habeas corpus. Moreover, in some instances registrants are ordered to report for induction at a point hundreds of miles away from their place of residence. In either instance the inductee would be beyond the reach of compulsory process he may need to use for his witnesses, and often he would be found to be without friends or relatives near him to assist in obtaining an attorney for prosecuting a habeas corpus proceeding.

Indeed, habeas corpus after induction has proved to be a very uncertain source of relief. In instances where one refusing to submit to the induction ceremony, in order to avoid extreme military penalties, attempts to obey military orders pending the bringing and disposition of his petition for writ of habeas corpus, it has been held that the right to writ of habeas corpus is waived. *Mayborn* v. *Heflebower*, 145 F. 2d 864 (CCA-5) cert. denied, 65 S. Ct. 1087; *Catovolo* v. *Hibbs*, 145 F. 2d 866 (CCA-5) cert. denied, 65 S. Ct. 1087.

The decision of the court below perverts the present Act into the form of the 1917 Act by an illegal construction, which is reading into the present Act something that is not to be found therein, and which is contrary to the genius of the Bone amendment.

The original Senate [Burke-Wadsworth] Bill contained a provision for concurrent jurisdiction over violators of the Act in the civil and military courts. (86 Cong. Record, part 9, p. 10709) The Act was later amended to embody clear exemption from military jurisdiction by the violator who was not actually inducted. Senator Bone, introducing the amendment, said: "My amendment would substitute the United States District Court as the body to try such a young man [who violates an order to report for induction] instead of a naval or military court martial. . . ." (p. 10985) In conference of both houses, the Senate provision was accepted. The conference report reads: "The Senate Bill provided that persons subject to the Bill who fail to report for duty as ordered should be tried exclusively in the District Courts of the United States and not by military or naval court-martial, unless such persons had actually been inducted for the training and service prescribed in the Bill or unless they were subject to trial by court martial under laws in force prior to the enactment of the bill. . . .

"The conference agreement contains the provision of the Senate Bill in this respect."

It should be observed that Section 11 of the Act (50 U. S. C. App. § 311) provides that "No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted. . . ." If, therefore, the Act provides for a trial in a civil court and denies trial in a military court, due process requires that he have a judicial trial and not a trial by ordeal such as petitioner received in this case. See concurring opinion of Mr. Justice Black in *Keegan* v. *United States* (1945) 65 S. Ct. 1203.

Before the Committee on Military Affairs, House of Representatives, Major (now Major General) Lewis B. Hershey testified that the military authority should not be the policeman to enforce the Act. (Hearings before the Committee on Military Affairs, House of Representatives, 76th Cong. 3d Session, on H. R. 10132, pp. 125-126)

The First Report of the Director of Selective Service, 1940-41, declares that the prosecution of alleged violators, who have not reported for induction, has not been vested with the military authorities. He states that America learned the lesson from the Civil War when draft riots resulted; that there is considerable difference in the enforcement of the 1940 Act, as the legal obligations upon the registrant are not the same as under the 1917 Act. He also reported that all delinquents under the 1940 Act are prosecuted by civil authorities through the Department of Justice, that the military authorities had no jurisdiction over a delinquent.[5] He reports that the enforcement of the Act in this manner has gained acceptance by the general public.[6]

Moreover, the very purpose of the provision of the Bone amendment, for prosecutions in the United States District Courts under the criminal sanctions clause in Section 11 of the Act, was to keep controversies out of the jurisdiction of the armed forces because such frustrated the training of soldiers. Habeas corpus is particularly disruptive of the training program of the armed forces, and this was one of the reasons that motivated the Congress in providing for the criminal sanctions clause of the Selective Training and Service Act of 1940, rather than automatic induction as under the Selective Service Act of 1917.

Experience under the Draft Act of 1917 demonstrated that the prosecution of writs of habeas corpus was a dangerous impediment to the training of an army in time of national peril, thus proving the reason for the different framework in the 1940 Act. The situation was described as follows by the Provost Marshal General in his final report to the Secretary of War:

[5] *Selective Service in Peacetime* (Gov. Printing Office 1942), pp. 293-296. The Department of Justice is expected to enforce the criminal provisions of the Act, and not the Army or Navy. *Selective Service in Wartime*, p. 312

[6] *Op. cit.* p. 297. The increase in inductions has not proportionately increased the cases under the Act. *Selective Service in Wartime*, p. 311.

"During this draft the practice of serving writs of habeas corpus on the officers of the bureau became so prevalent as to interfere seriously with the progress of the business."

Silence of the Act does not prohibit the Court from allowing a defense to the indictment where it appears that the registrant has exhausted his administrative remedies upon a completion of the selective process. Reference is here made to the case of *Western Union Tel. Co.* v. *Lenroot* (1945), 65 S. Ct. 335, 344, where the Court said:

"Ascertainment of the intention of Congress in this situation is impossible. It is to indulge in a fiction to say that it had a specific intention on a point which never occurred to it. Had the omission of a direct prohibition of this employment been called to its attention, it might well have supplied it, for any reason we can see. Congress of course has the right to be indirect where it could be direct and to be obscure and confusing where it could be clear and simple. But had it determined to reach this employment, we do not think it would have done so by artifice in perference to plain terms. It is admitted that it is beyond the judicial power of innovation to supply a direct prohibition by construction. We think we should not try to reach the same result by a series of interpretations so far-fetched and forced as to bring into question the candor of Congress as well as the integrity of the interpretative process. After all, this law was passed as the rule by which employers and workmen must order their daily lives. To translate this Act by a process of interpretation into an equivalent of the bills Congress rejected is, we think, beyond the fair range of interpretation. Declining that, we cannot sustain the Government's bill of complaint. *Reversed.*"

The Government in the court below sought to show by a quotation from the Report of the Committee on Military Affairs, House Report 36, 79th Congress, 1st Session (report on H. R. 1752) that Congress intended to deny all judicial review in defense to an indictment charging one with a violation of the Act. This report of the Committee merely noted the construction placed upon the Act by the courts. It did not attempt to say what Congress intended in the passing of the Act four years previously. Indeed, the Court in the *Falbo* decision found there was no record of legislative intention. (p. 549, 554) Moreover, when H. R. 1752 [Report 36], 79th Congress, 1st Session, reached the floor of the House of Representatives, it had been amended so as to provide for judicial review. Section 4 of the Bill provided for amendment of Section 11 of the Act in the following language:

> "(b) in the case of an alleged violation of section 5 (n) (4), it shall be a defense to such alleged violation for the individual to show (1) that he made timely application for revocation or modification of the order under section 5 (n) (4), and (2) that the denial of the revocation or modification requested was not based on a fair consideration of his application."

This proposed amendment to the Act showed that the members of Congress who proposed the Bill were alarmed over the construction placed on the Act by the courts in denying a defense to one charged with a violation of an administrative order. Indeed, the Select Committee to Investigate Executive Agencies, in its Second Intermediate Report (H. R. 862, 78th Congress, 1st Session, p. 5), had already condemned and assaulted the decisions of the courts in criminal cases involving violations of administrative orders as an aberration. The Committee said, *inter alia*, "That a citizen may be indicted, tried, and convicted for violation of an illegal regulation or order made by an executive

agency, without having the right to plead such invalidity to the court where he is indicted and tried is, indeed, a novelty in our jurisprudence, and if sustained by the courts it should be immediately corrected by amending the act." In any event the later proceedings of Congress cannot be given retroactive effect to give an intention to acts of Congress long before enacted.

Due process of law requires that one charged with a violation of an administrative order be permitted to defend against the indictment on the ground that the order is void and violates his constitutional rights.

In *California* v. *Latimer*, 305 U. S. 255, it was intimated that one charged by indictment with refusal to comply with an administrative order would be permitted to defend and show that the act under which the order was made does not apply to the defendant. That case involved an original action by the State of California against the Railroad Retirement Board and the Commissioner of Internal Revenue to enjoin enforcement of the Railroad Retirement Act which provided: "Any officer or agent of an employer, . . . who shall willfully fail or refuse to make any report or furnish any information required, in accordance with the provisions of Section 10 (b) 4, by the Board . . . shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year." The Bill was dismissed for want of equity. Mr. Justice Brandeis said, among other things: "Moreover, the Board is without power to enforce its regulations except by resort to legal proceedings, as provided in Sec. 10 (b) 4; and in any suit which it may institute to enforce the regulations, ample opportunity is afforded to defend, on the ground that the State Belt Railroad is not subject to the Railroad Retirement Act."

The Government in the court below indulged in a highly inflammatory argument for the purpose of getting the court off the real issue. It was said that those who have been illegally treated by the draft boards and given an illegal order were not "to be encouraged and rewarded with judi-

cial review merely because they refuse to complete the induction process at a later stage."

The purpose of this argument is that violations of the Act are to be discouraged by an outright denial of all legal defenses.

This is indeed an innovation. It is a new theory in criminal procedure which the Government would have this Court graft onto the law contrary to the spirit of the constitutional guarantees of procedural due process in criminal actions. If such a quest proves successful then a bridgehead has been made upon the field of criminal law which would allow courts to deny self-defense in murder cases, the defense of consent in rape cases, and hundreds of other defenses in all criminal cases, on the theory that the denial of defense would be a deterrent to the commission of crime. Cf. *Hovey* v. *Elliott*, 167 U. S. 409; *Windsor* v. *McVeigh*, 93 U. S. 274.

B

VIOLATION OF PROCEDURAL DUE PROCESS

Although the majority opinion of the court below did not discuss the matter, the Government contended that the Regulations do not authorize petitioner to complain of the refusal of the board to permit him to file additional evidence concerning his ministerial activity eighteen months after he had signed his appeal papers and two months before the file was forwarded to the board of appeal for review. Indeed, the Government says that a registrant has no right to file any additional information at any time after his appeal is taken regardless of whether his Cover Sheet has been forwarded to the board of appeal.

[6] The views herein advanced that the petitioner has been denied procedural rights of due process so as to enable him to challenge the validity of the commands based on the order to report for induction are fully supported by the ably stated views and cogent arguments advanced by Judge Biggs in his dissenting opinion fully concurred in by Judge Leahy. ( ) See Appendix, pages 15a-21a, *infra*.

Section 615.43 (a) of the Selective Service Regulations provides, *inter alia*, "*Every paper pertaining to the registrant* except his Registration Card (Form 1) *shall be filed in his Cover Sheet* (Form 53)."

Section 626.2 provides, *inter alia*, "The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, . . . *if such request is accompanied by written information presenting facts not considered when the registrant was classified* which, if true, would justify a change in the registrant's classification."

Section 626.3 provides, *inter alia*, "When a registrant, . . . files with the local board a written request to reopen and consider anew the registrant's classification and the local board *is of the opinion that the information accompanying such request fails to present any facts in addition to those considered* when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board, by letter, should advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and should place a copy of the letter in the registrant's file."

Section 627.12 provides: "The person appealing *may attach to his notice of appeal* or to the Selective Service Questionnaire (Form 40) *a statement specifying the respects in which he believes the local board erred*, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, *and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.*"

Section 627.13 provides, *inter alia*, "Immediately upon completion of the actions required by paragraph (a) of this section, the local board shall attach the Individual Appeal

Record (Form 66) to the inside of the registrant's Cover Sheet (Form 53) and shall carefully check the registrant's file to make certain that all steps required by the regulations have been taken *and that the record is complete.*"

In Petitioner's Exhibit A, petitioner requested the reopening of his classification and the inclusion of his proffered additional information in his Cover Sheet. (167-168) In the alternative this letter was his written statement of appeal to which was attached additional "information which was offered to the local board and which the local board failed or refused to include in the registrant's file." (Section 627.13)

There is no time limit in Regulation 627.12 as to when the "statement" or the "information which was offered" and which the board "refused to include in the registrant's file" must be submitted by the registrant. The only reasonable limitation as to time of filing should be that the documents ought to be submitted to the local board before the cover sheet is forwarded to the board of appeal. For instance if a registrant went to his board in the morning to sign his appeal he would no doubt have the right to go back to the board on the afternoon of the same day and file his appeal statement or information not received by the board, provided the file had not been sent to the board of appeal.

By force of reason he could return on the next day, or during the next week, or the next month or even the next year to file these documents as long as his Cover Sheet was still with the local board and had not been forwarded to the board of appeal. Particularly is this true when the local board had not finished with his classification on account of not having ordered him to take a physical examination, as in this case. There is no question that when Estep offered the evidence to the board in 1944 some of the documents had been rejected by the board in 1942. Therefore under the Regulations he had the right to offer that as evidence which the board had refused him the right to file. Nor is section 627.12 confined to evidence offered

at a personal appearance. It is broad and unlimited and covers any evidence which may have been offered to the local board at any time before the file is sent to the board of appeal. If this construction is not placed on this regulation then it would be possible for the local board to usurp its prerogative under Part 626 which provides for submission of additional evidence upon reconsideration.

Thus if a local board rejected evidence offered on reconsideration the board of appeal, which considers classifications *de novo*, would be deprived of its right to correct errors committed by the local board under the regulations because the local board would have the unlimited power to withhold and keep from the board of appeal any evidence offered under section 626. (The new evidence offered in 1944, not submitted in 1942, was receivable under Section 626.) It seems to be inexorable that the local board must include in the registrant's file any additional evidence offered at any time before the file is forwarded to the board of appeal. This is especially true because the board of appeal makes all its determinations *de novo*. It should be the sole prerogative of the board of appeal to determine whether or not the additional evidence shall or shall not be incorporated in the file. At least the board of appeal should have the right to consider under Part 626 and Section 627.12.

Parts 626 and 627 of the Regulations are not for the sole use and benefit of the local board. The board of appeal has some rights under these sections. Those rights it was, by the local board's action, prevented from exercising. The local board performs a function very much like a master, referee or a notary public taking a deposition because it is for the board of appeal to pass on all question involved. Indeed, if the Government's contention were correct, the local board would have unlimited discretion to determine just what the board of appeal can or cannot consider under Parts 626 and 627 of the Regulations.

It is submitted that the action of the local board was a

violation of the Regulations which could not be cured by the classification of Estep by the board of appeal unless the board of appeal had the opportunity to pass upon the action of the local board in excluding the evidence. Since the board of appeal knew nothing of the illegal action of the local board it was impossible for it to take action to correct the usurpation of power by the local board.

Furthermore, the alleged ambiguity of the Regulations cannot be used to justify the action of the local board. Even in absence of any regulations as to the right to file additional evidence the registrant would have the right, under the circumstances of this case, to submit additional evidence in view of the long lapse of time from the date of classification to the date of sending the papers to the board of appeal. Indeed, the due process clause of the Fifth Amendment requires such a conclusion and compels a construction to be placed upon the Regulations similar to that adopted by the Selective Service System in the *Rinko* case, because the action of the board of appeal is *de novo*. *United States* v. *Pit* (CCA-3) 144 F. 2d 169.

The Regulation mentioned on page 29 of "Appellant's Appendix" filed in the court below is Section 627.13, which provides, *inter alia*, "If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts. In preparing such a summary, *the local board shall be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision.*" In the Estep case the board's letter (Petitioner's Exhibit M, p. 223 of "Appellant's Appendix") was not a summary of any facts not reduced to writing. It was a prejudicial statement and argument made in face of the record against Estep—made for purpose of influencing the board of appeal, contrary to the Regulations.

Assuming, *arguendo*, that Estep's going to the end of the selective process by refusing to submit to the induction

ceremony does not exhaust the remedies sufficiently to entitle him to challenge the erroneousness of his classification, there is nevertheless a different problem presented here. The withholding of evidence by the local board denied the final and real classifying agency of the Selective Service System the right to a full review of appellant's case. The act of the local board was tantamount to a denial of the right of appeal. It is a denial of procedural due process so as to make the order upon which the indictment is based void and the same as though no order had been issued at all. Under these circumstances the courts have held that the illegality of the order can be considered in defense to the indictment and that the doctrine of *Falbo* v. *United States, supra,* does not apply. *Tung* v. *United States* (CCA-1) 142 F. 2d 919. The decision of the court below conflicts directly with the *Tung* decision. Cf. *United States* v. *Peterson* (USDC-ND Calif.) 53 F. Supp. 760; *United States* v. *Lair* (USDC-ND Calif.) 52 F. Supp. 393; *Ex parte Stanziale* (CCA-3) 138 F. 2d 312. It should be observed in the *Tung* case that the Government accepted the decision of the First Circuit as the law by not applying for certiorari, which was available to it.

The Government attempted to lead the court below to believe that the *Rinko* case also involved the issue of procedural due process exactly like the one here involved and that such contention was overruled by the Seventh Circuit Court of Appeals. (See Supp. Br. for Appellee, p. 24, filed in the court below.) In this connection, it must be said that Rinko did not contend that there was a denial of procedural due process as claimed by the Government. Although the local board in the *Rinko* case did exactly the same as did the local board in this case by denying Rinko the right to file additional evidence, the chicanery of the local board was called to the attention of the board of appeal and the State Director of Illinois who directed that the rejected evidence be placed in the file on appeal for consideration by the board of appeal. (See Appendix, this brief, pages 31a-37a, *infra.*)

This was done. Accordingly, the due process question was cured in the *Rinko* case before it got into the courts and it could not be raised and was not considered by the district court, the circuit court of appeals or this court.

Conclusion

It is submitted that this case is one calling for the exercise by this Court of it's supervisory powers under the Judicial Code and the Rules of this Court. To that end the petition for writ of certiorari should be granted so as to correct the assigned errors committed, and the judgment rendered by the Circuit Court of Appeals and the District Court against petitioner should be reversed and petitioner discharged, or, in the alternative, the judgments should be reversed and a new trial ordered.

Respectfully submitted,

HAYDEN C. COVINGTON
Counsel for Petitioner

APPENDIX

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8810. October Term, 1944.

UNITED STATES OF AMERICA

v.

WILLIAM MURRAY ESTEP,
Appellant.

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

Before PARKER, BIGGS, MARIS, GOODRICH and MCLAUGHLIN, *Circuit Judges*, and LEAHY, *District Judge*.

OPINION OF THE COURT

(Filed July 6, 1945.)

By GOODRICH, *Circuit Judge*.

Defendant, Estep, one of Jehovah's Witnesses, was indicted for failure to obey an order of his local board directing him to appear and be inducted into the United States Navy (50 U. S. C. A. Appendix § 311), and was found guilty. Estep had appeared at the induction center, after having been examined and found acceptable, and was told to "take one step forward" [1] constituting his induction into the Navy. He refused, giving the officer in charge a letter in which he asserted that as "a regular or duly ordained minister of religion" he was entitled to exemption from training and service by reason of Section 5 (d) of the

[1] Directive of the Bureau of Navy Personnel, June 2, 1944, Circular Letter No. 11-44, provides for this method of induction.

Selective Training and Service Act of 1940 as amended, 50 U. S. C. A. Appendix § 305 (d).

The facts are as follows. On June 30, 1942, Estep registered. Subsequently he filed his questionnaire in which he claimed to be a minister and entitled to IV-D status. The local board unanimously classified him I-A; he appeared before the board claiming IV-D classification. This was refused; and on October 27, 1942, he filed notice of appeal. Shortly thereafter, he attempted to file three affidavits corroborative of his activities as a minister of religion which the chief clerk refused, a refusal which the defendant asserts violated Section 615.43 of Selective Service regulations.[2]

On cross-examination at the trial, the United States Attorney objected to the attempt by Estep's counsel to determine whether the clerk had lied as to the whereabouts of Estep's file; he was sustained. It is claimed this was error if for no other reason than the credibility of the witness was involved in the question, but retrial on this ground alone was waived. The file or Cover Sheet was actually lost and apparently not found until early in 1944.

On February 22, 1944, Estep wrote to the local board stating that so far as he knew his case was being considered by the appeal board and that he did not wish to add to his file as it contained full explanation of his position. On April 19, 1944, Estep was directed to report for pre-induction physical examination; he was found fit for service and acceptable by the Navy. On May 23, 1944, Estep wrote to the local board stating he had examined his file and found certain documents missing; he inclosed eleven affidavits;[3] and he repuested reconsideration of his I-A classification.[4]

[2] Selective Service Regulations, Section 615.43, provide in part: "Every paper pertaining to the registrant except his Registration Card • • • shall be filed in his Cover Sheet • • • ".

[3] This letter and accompanying documents are marked "Deft's Ex. 'A', 12/7/44 H. T.", but were not admitted in evidence despite this designation. However, the brief of the United States refers to these documents as though in evidence and in fact sent to appeal board by local board.

[4] Selective Service Regulations, Section 626.2, provide in part: "The local board may reopen and consider anew the classification of a registrant • • • upon the written request of the registrant • • • , if such request is

Of all the documents in his file these alone were not stamped; the chief clerk testified they were in the file but "not a part of his file." On July 28, 1944, Estep's file was forwarded to the appeal board. Accompanying it was a letter by the assistant clerk of the local board asserted to be violative of Section 627.13 (b) of the Regulations.[5] On August 2, 1944, the appeal board unanimously classified Estep I-A and ordered him to report for induction on September 11, 1944. The events transpiring at the induction center have already been set out.

Estep asserts denial of due process of law by those charged with administering the Selective Training and Service Act. He contends that the local board's "Order to Report for Induction" was without legal sanction; that he had exhausted the Selective Service process; and that he was entitled to raise these matters as a defense in his trial on the criminal indictment for violation of the Selective Service Act.

In one of the earlier decisions applying the Selective Service Act, this Court said in United States v. Grieme, 138 F. (2d) 811 (C. C. A. 3, 1942), "We think it is clear that, if a local draft board acts in an arbitrary and capricious manner or denies a registrant a full and fair hearing, the latter, although bound to comply with the board's order, may, by writ of habeas corpus, obtain a judicial determination as to the propriety of the board's conduct and the character of the hearing which it afforded. The registrant may not, however, disobey the board's orders and then defend his dereliction by collaterally attacking the board's administrative acts." See also Ex Parte Stanziale, 138 F. (2d) 312 (C. C. A. 3, 1943), cert. den. 320 U. S. 797 and United States v. Pitt, 144 F. (2d) 169 (C. C. A. 3, 1944).

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accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification * * *"

[5] Selective Service regulations, Section 627.13 (b) provide in part: "In preparing * * * a summary [of the written information in registrant's file], the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision."

The Fourth Circuit took a somewhat different view in Goff v. United States, 135 F. (2d) 610 (C. C. A. 4, 1943). In Falbo v. United States, 320 U. S. 549 (1944), the Supreme Court referred to the conflict and adopted the view stated in the Grieme case, supra. Even before the Falbo decision, supra, the same principle had been recognized. In the concurring opinion in Hirabayashi v. United States, 320 U. S. 81 (1943), Mr. Justice Douglas regarded it as settled law, and cited the Grieme case, supra, among others, as an instance in the law where "one must obey an order before he can attack as erroneous the classification in which he has been placed." And in the Falbo case, the Supreme Court held that Congress has not "authorized judicial review of the propriety of a board's classification in a criminal prosecution for wilful violation of an order directing a registrant to report for the last step in the selective process • • • ".

Defendant accepts the Falbo decision, as of course he must. But he contends that the "last step in the selective process' is acceptace by the military forces after pre-induction examination, and appearance at local board and induction center, rather than actual induction into service. For this he relies heavily on the decision in Billings v. Truesdell, 321 U. S. 542 (1944) which followed less than four months after the Falbo decision. The holding in the Billings case was that a man is not subject to military law or discipline until inducted and he is not inducted when accepted by the military but only when he has undergone the formal induction ceremony. The distinction thus made between acceptance and induction serves defendant as a basis for his contention that acceptance completes the administrative process, and that thereafter judicial review of classification can be called for.

In deciding when the administrative process is completed, it is relevant to keep in mind what all the activity is for. It is not ceremonial ritual, nor was it designed to provide committee activity for citizens of the various com-

munities. It was, and is, designed to provide an Army and a Navy in a time of national emergency. The language of Congress, of the Supreme Court, and of those responsible for the administration of the selective service system, all make this clear.

In the first words of the Act itself, Congress declared it "imperative to increase and train the personnel of the armed forces of the United States." 50 U. S. C. A. Appendiz § 301 (a). The Supreme Court, taking note of Congressional intent in the Falbo case, emphasized that "the Act was passed to mobilize national manpower with the speed which that necessity and understanding required."

Couple these statements with the fact that the Act contains no explicit provision for judicial review prior to induction and Congressional design becomes manifest. The needs of the country come before those of the individual. Public necessity outweighs temporary individual inconvenience, even, it may be admitted, imposes considerable individual hardship in some cases. We cannot force the recruiting of the armed forces to wait while a civilian litigates his own private claims. Until a man is actually inducted he remains a civilian and military need is unsatisfied. The Billings case, far from being of aid to defendant, only makes it clearer that civilian status remains unchanged until induction actually takes place. So far as achieving what Congress intended is concerned, it makes no difference whether a man refuses to register, or to fill out a questionnaire, to report to local board or induction station, or refuses to be inducted. In any event, the end is not achieved while the man remains a civilian. Until he is inducted the administrative process has not been exhausted. Until it is, the registrant may not challenge validity of the local board's order in court.

The intent of the Act is further reflected in the Selective Service Regulations which provide in part that an order to report for induction carries with it the duty "to

report for induction"[6] and "to submit to induction". The order is clearly part of the administrative process which is not exhausted until the order is fully obeyed. Partial obedience is not exhaustive. We think the explicit language of the Regulations is in accord with what seems to us the clear Congressional purpose of the Act.

The Falbo case, supra, goes much further than establishing a mere procedural requirement. The principle laid down, as already noted, is based on Congressional intent concerning necessity of uninterrupted speed in fulfilling the local board's orders, for complete achievement of national defense. As was pointed out in Smith v. United States, 148 F. (2d) 288 (C. C. A. 4, 1945): "Among the advantages in cases such as this of limiting the remedy of the draftee to habeas corpus proceedings commenced after the administrative process has been completed is that * * * questions which are primarily constitutional in character are heard before a judge without the distractions and uncertainties likely to accompany a criminal jury trial. Constitutional rights of citizens must, of course, be preserved in war as well as in peace; but the procedure outlined in the Falbo and Billings cases enables the courts to preserve without unduly interfering with the war effort."

Still another consideration has been presented by Connor and Clarke, Judicial Investigation of Selective Service Action, (1945) 19 Tulane Law Review 344: "* * * a criminal proceeding presents an inappropriate forum for testing selective service action. This is evident because if the alleged improper or illegal action were not established as a defense nothing remains for the court to do but to fine or imprison the defendant, and the latter penalty is usually imposed. In any case the armed forces have lost a unit of manpower, whereas if the hearing is on a petition for the writ of habeas corpus the petitioner would in such a case be returned immediately to military control to begin his train-

[6] Selective Service Regulations, Section 633.21 (a).
[7] Selective Service Regulations, Section 633.21 (b).

ing. On the other hand, if the allegations of the defendant in the criminal proceedings were sufficiently convincing to justify acquittal he is discharged, but the same result obtains when the hearing is on the writ of habeas corpus."

After the Falbo and Billings cases, supra, a number of cases arose in the various circuits. One case, Tung v. United States, 142 F. (2d) 919 (C. C. A. 1, 1944) must be distinguished for there the defendant, "had not somewhere along the line by choice abandoned the administrative remedies given him by the Act, but instead was attempting to pursue them [by means of appeal]." There followed a series of cases where the registrant had not gone quite as far toward completion of the administrative process as in the instant case. Defendant either did not report to induction station or to the local board. See for example: Giese v. United States, 143 F. (2d) 633 (U. S. Ct. of App., 1944), affirmed, Per Curiam, 323 U. S. 682; Enge v. Clark, 144 F. (2d) 638 (C. C. A. 9, 1944); Bagley v. United States, 144 F. (2d) 788 (C. C. A. 9, 1944); United States v. Madole, 145 F. (2d) 466 (C. C. A. 2, 1944); Biron v. Collins, 145 F. (2d) 759 (C. C. A. 5, 1944); Goodrich v. United States, 146 F. (2d) 265 (C. C. A. 5, 1944); Tatum v. United States, 146 F. (2d) 406 (C. C. A. 9, 1944); Shigeru Fujii v. United States, 148 F. (2d) 298 (C. C. A. 10, 1945); Klopp v. United States, 148 F. (2d) 659 (C. C. A. 6, 1945). In still another case, Harris v. Ross, 146 F. (2d) 355 (C. C. A. 5, 1944), habeas corpus was properly brought after induction to test lack of due process. In all of these cases the ratio decidendi was that of the Falbo case, as we have interpreted it.

Two decisions present facts squarely in point with the instant case. United States v. Flakowicz, 146 F. (2d) 875 (C. C. A. 2, 1945), cert. den. April 30, 1945, and United States v. Rinko, 147 F. (2d) 1 (C. C. A. 7, 1945) cert. den. April 30, 1945. In each instance defendant was found "acceptable" after reporting for examination but refused to submit to induction. In the Rinko case, supra, the attempt to characterize the Billings case as a limitation of the

Falbo doctrine failed, because the court thought "it is unreasonable to suppose that the court intended thereby within less than 90 days following the Falbo decision to announce any different procedure than that approved in the Falbo decision—at least not by implication."

In Smith v. United States, 148 F. (2d) 288 (C. C. A. 4, 1945), another issue was involved in the case and in part determined its conclusions. The general rationale, however, flowed clearly from the Falbo doctrine so far as it could be applied to the facts of that case. Specifically the Smith case stated, "the administrative process is not exhausted until the order of the board is complied with, which, as we have seen, embraces submitting to induction."

Our conclusion does not make a trap of the Falbo case. While defendant must report to the military in order to exhaust his administrative remedies, this does not mean that he can be forcibly inducted; nor does it mean that his induction is an exercise of free will and untrammeled choice. It simply means that when defendant submits to induction to exhaust administrative procedure he does so, under protest of the military's rights to hold him, as a duty of co-operation in effective law enforcement. Such submission is far different from either voluntary induction or forcible induction. Admittedly, under the Billings decision, forcible induction is no induction at all. And admittedly, where there is a voluntary submission to the authorities, habeas corpus cannot be brought because there can be no deprivation of freedom through a voluntary act.[8] But to submit under a command of law good at face value is not voluntary submission such as will bar judicial review. The law knows a number of situations, even in peacetime, where submission is regarded, as it should be here, as a duty of co-operation in effective law enforcement rather than as a voluntary submission such as will bar judicial review. "Thus it is his duty to submit to arrest, upon a warrant

[8] See Baker v. Grice, 169 U. S. 284 (1897); Ex Parte Simon, 308 U. S. 144 (1939); United States v. Peckham, 143 Fed. 625; Ex Parte Ford, 160 Cal. 334, 116 P. 757.

valid on its face, even though the warrant may turn out later to be invalid. A citizen who resists arrest under such circumstances may subject himself to punishment for so doing, in spite of his complete innocence of the original accusation upon which the warrant was issued. So, also one who is held upon a commitment, valid on its face, may be guilty of escape if he forces his way out of custody, even though the commitment, when properly challenged, may prove to be insufficient. Again, one who is a fugitive from a State in which he is unjustly accused of crime may, nevertheless, be subjected to extradition if the indictment and requisition are in proper form. And he may become guilty of a crime, under the federal law, merely by fleeing to another State to escape prosecution." Giese v. United States, 143 F. (2d) 633, 635 (D. C. Ct. of App. 1944) affirmed, Per Curiam, 323 U. S. 682. The court, in the opinion from which this quotation is made, further points out, the order to report is comparable legal process valid on its face.

There is no need to confine ourselves to the broad principles derived from analogy alone, however. There are sufficient decisions under the Selective Training and Service Act to make it clear that a man may submit to induction without losing his right to review by habeas corpus. It should be stated, in frankness, that the point has been assumed, rather than discussed by the courts. That fact, we believe, does not weaken the force of the decisions in showing the judicial attitude on the point. Harris v. Ross, 146 F. (2d) 355 (C. C. A. 5, 1945); Smith v. United States, 148 F. (2d) 288 (C. C. A. 4, 1945); United States ex rel. Reel v. Badt, 141 F. (2d) 845 (C. C. A. 2, 1944); United States ex rel. Brandon v. Downer, 139 F. (2d) 761 (C. C. A. 2, 1944); United States ex rel. Phillips v. Downer, 135 F. (2d) 521 (C. C. A. 2, 1943); Bagley v. United States, 144 F. (2d) 788 (C. C. A. 9, 1944) (dictum); United States v. Bowles, 131 F. (2d) 818 (C. C. A. 3, 1944) (dictum); affirmed 319 U. S. 33; Drumheller v. Berks County Local Board No. 1, 130 F. (2d) 610 (C. C. A. 3, 1942) (dictum);

Rose v. United States, 129 F. (2d) 204 (C. C. A. 6, 1942) (dictum). In the District Courts the principle has been recognized even more than in the Circuit Courts. Ex Parte Stewart, 47 F. Supp. 410 (D. C. Cal. 1942); U. S. ex rel. Bayly v. Reckord, 51 F. Supp. 507 (D. C. Md. 1943); U. S. ex rel. Altieri v. Flint, 54 F. Supp. 889 (D. C. Conn. 1943), affirmed 142 F. (2d) 62; Micheli v. Paullin, 45 F. Supp. 687 (D. C. N. J. 1942); U. S. ex rel. Mauro v. Downer, 50 F. Supp. 412 (D. C. N. Y. 1943); In re Rogers, 47 F. Supp. 265 (D. C. Tex. 1942). Both as a matter of broad principle and actual application habeas corpus is firmly rooted in the law as a post-induction remedy that is not defeated by the fact of obedience to orders by the inductee.

The judgment of the District Court is affirmed.

BIGGS, *Circuit Judge*, dissenting.

The defendant, Estep, contends that he was denied due process of law by the Selective Service agencies and that the trial court also denied him his constitutional rights by ruling that he might not interpose the asserted invalidity of the order requiring him to report for induction as a defense to his indictment. I conclude for the reasons hereinafter stated that Estep was denied due process of law by the Selective Service agencies, that the order requiring him to report for induction was invalid and that the trial court erred in not permitting the defendant to assert this as a defense to his indictment. As I read the opinion of this court, the majority conclude that even if Estep was denied due process of law by the Selective Service agencies he may not raise this issue as a defense at his trial but must submit to induction and then seek relief by way of application for a writ of *habeas corpus*.

I shall call attention to certain facts which I think require particular consideration since, in my opinion, they show that Estep was denied due process of law by the

Selective Service agencies and by the court below in an erroneous interpretation of the existing law. Some of the circumstances appear from evidence received by the court below; others, from the offer of proof made by the defendant during the course of the trial. For the purposes of this appeal, the matter contained in the offer of proof must be deemed to be true. Substantially all of it is documentary and its probative force may not be seriously controverted. I shall treat the proof in evidence and that contained in the defendant's offer as if they were one except for occasional specific references.

Estep, a member of the sect of Jehovah's Witnesses, was found guilty on an indictment charging him with failure to obey an order of his local board directing him to appear and be inducted for training and service in the United States Navy. Estep at the induction center and when his name was called so that he might "take one step forward"[1] to constitute his induction into the Navy, he refused to take that step. Estep gave a letter to the officer in charge, stating his reasons for refusing induction. In this letter he asserted that he was "a regular or duly ordained minister of religion" and entitled to exemption from training and service by reason of Section 5 (d) of the Selective Training and Service Act of 1940 as amended, 50 U. S. C. A. Appendix § 305 (d). Estep's course was patterned on that of Billings. See Billings v. Truesdell, 321 U. S. 542. Compare the circumstances of United States v. Pitt, (CCA 3) 144 F. 2d 169.

Estep registered on June 30, 1942. His questionnaire was received by the local board on August 22, 1942. He stated in his questionnaire that he was a minister and claimed a IV-D classification. On October 3, 1942, the local

[1] A directive from the Bureau of Navy Personnel under date of June 22, 1944, Circular Letter No. 11-44, provides that the registrants assigned to naval service must be informed of the imminence of induction and that the inducting officer will then state to them: "You are now about to be inducted into the United States Navy. You will take one step forward as your name is called and such step will constitute your induction into the United States Navy."

board by the unanimous action of its members classified him as I-A. On October 21, 1942 Estep appeared before the board and stated his reasons why he believed he was entitled to a IV-D classification. The following day the board informed Estep that after considering his case it refused to change his classification. On October 27, 1942, Estep wrote a letter to the board in which he stated, "I hereby file notice of appeal from classification I-A to classification 4-D." At a date not clear from the record but shortly after the date last mentioned, Estep went to the office of the local board and endeavored to file three affidavits, executed respectively by C. R. Hessler, by Earl Ferree, and by William G. Reese. Hessler, Ferree and Reese were members of the sect of Jehovah's Witnesses and the subject matter of their affidavits was corroborative of Estep's assertion that he was a regular minister of religion. Estep had filed with the local board a copy of his certificate of association with the Watchtower Bible and Tract Society. The affidavits of Hessler, Ferree and Reese, the copy of the certificate of association aside, constituted the only corroboration offered by Estep of his asserted status as a minister of religion up to that time. The affidavits, though included in the offer made by Estep's counsel at his trial, were not received in evidence.

The chief clerk of the local board refused to accept the affidavits, stating, according to Estep's testimony, that the board could not receive them because Estep's case was before the appeal board. On cross-examination at Estep's trial the chief clerk was asked the reason for his refusal to receive the affidavits. He replied that Estep had no right to file the affidavits since his case had come before the local board and had been "considered". He was then asked by Estep's attorney, "Mr. Clark, you told him that his file was before the appeal board?" He replied, "I might have told him that, yes." He was asked, "Then you told him a lie?" He answered, "Possibly." Estep's counsel then inquired, "Why did you tell him a lie?" The

question was not answered, for an objection interposed by the United States Attorney was sustained. Actually, at the time Estep offered the affidavits to the chief clerk, his cover sheet or file was lost. The file or cover sheet was not sent to the appeal board until 1944. Despite the fact that it was lost, an anonymous communication with a newspaper clipping attached, received by the local board in an envelope postmarked December 2, 1942, found its way into the cover sheet. When this anonymous communication was offered in evidence by Estep's counsel, apparently as proof of irregularity of the proceedings before the board, it was refused admission. The clerk of the local board also testified that Estep's file "came to light at the time . . . [Estep's] brother's case was before the Federal Court." This date is not in the record but the file or cover sheet apparently was found by the local board early in 1944.

On February 22, 1944 Estep wrote a letter to the local board in which he stated in part, "So far as I know my case is being considered by the Board of Appeal. I do not wish to add anything further to my file at this time as the information it now contains fully explains my position as a minister and sets forth by request for a minister's classification; that is, a IV-D classification."

On April 19, 1944 Estep was directed to report for a preinduction physical examination and was found fit for service and acceptable by the United States Navy. On May 23, 1944 Estep wrote a letter to the local board in which he stated that he had gone over his file in the office of the local board and ". . . found that certain statements which had been attached to my questionnaire; ministerial certificate from the Watchtower Bible & Tract Society . . . ; copy of 'Consolation' magazine . . . [and certain other documents] are all missing from my file. I have prepared copies of these letters and statements and attach them hereto." Estep also said in the letter, "I believe that Local Board No. 4 has not given sufficient consideration to my case, and I request that they again reconsider it and give me

my proper classification as a regular and duly ordained minister, namely, IV-D. In October 1942 I presented to the Local Board for filing in my file a sworn statement dated October 17, 1942, and affidavits from C. R. Hessler, Earl Ferree, and William G. Reese. At that time I was advised that my file had been sent to the Appeal Board and that these papers could not be added to the file. Apparently the file has not been sent to the Appeal Board as yet, and I enclose these affidavits and request that the Local Board consider them and add them to my file." Enclosed with the letter were eleven affidavits (those of Hessler, Ferree and Reese hereinbefore referred to and eight additional affidavits also corroborative of Estep's asserted status, all rejected by the trial court) and certain other documents which need not be described here. The chief clerk of the local board testified that Estep's letter of May 23, 1944 was in Estep's file "but is not part of his file". Neither the letter nor any of its accompanying documents is stamped with the stamp of the local board.

On July 28, 1944 Estep's file was forwarded to the appeal board.[2] It was accompanied by a letter written by an assistant clerk of the local board to the appeal board. The letter was received in evidence. It states in part, "Mr. Estep is not listed as a minister in any list yet submitted from National Headquarters of Selective Service. Although this registrant is not gainfully employed and devotes his time to the ministry, he does not contribute enough hours to this work to be considered a full-time minister since he works only three days a week in that capacity and is not justified to a 4-D classification." The minutes of Estep's hearing of October 21, 1942 before the local board supply the only evidence from which the board could infer that he devoted only three days a week to his work as a member of the sect of Jehovah's Witnesses. This evidence is slight,

[2] The reason for the additional delay in forwarding Estep's appeal to the appeal board does not appear from the record. The lost file or cover sheet had been found prior to April 19, 1944.

amounting to a little more than a scintilla. A transcript of the minutes of Estep's hearing before the local board, though offered in evidence by Estep, was rejected by the trial court.

On August 2, 1944 the appeal board by unanimous action classified Estep as 1-A.[3] He was ordered to report for induction on September 11, 1944.

Estep asserts as has been stated that he was denied due process of law by the tribunals and persons charged with administering the Selective Training and Service Act; because, in particular, his local board and those acting for it or pursuant to its authority did not adhere to the regulations promulgated under Section 10 of the Act, 50 U. S. C. A. Appendix § 310. He contends in effect that the corroborative material offered by him was not received by the local board and was not considered by the appeal board; that if it had been considered these tribunals would have concluded that he was a regular minister of religion and entitled to exemption from training and service. He asserts also that the letter of July 28, 1944, written on behalf of his local board to the appeal board prejudiced his case with the appeal board. For these reasons he contends that the

[3] On August 10, 1944 a letter was written by the legal adviser for the State Director of Selective Service to the chairman of the local board, which stated, "We are returning the cover sheet of the above registrant [Estep]. On August 2, 1944, the board of appeal affirmed your I-A classification of October 3, 1942. . . . We would appreciate being advised as to the reasons for delay in acting on this case and your returning the cover sheet to us with your letter of explanation. When you return the cover sheet, please obtain from the registrant a statement as to his precise activities as a Jehovah's Witness at this time, including the amount of time he now devotes, and his official title in that organization." On August 22 a clerk of the local board enclosed Estep's "complete file" and wrote that "The delay in acting on this case was through an oversight on the office force." The letter also states that a statement was obtained from Estep as to his activities as a Jehovah's Witness as of the date of the letter. This statement is not in evidence and is not included in any part of Estep's file or cover sheet with the local board, presently before us. On August 25 a letter was written by the Deputy State Director to the local board stating that ". . . it is apparent that there has been considerable irregularity in the handling of this case, and we are disturbed by the inadequacy of the explanation offered. . . ." The letter went on to say, "We are now particularly concerned in having the file perfected and in having the case further processed in accordance with the obvious requirements, in that you complete the 'Local Board' action on receiving decision of Board of Appeal . . . and proceed to order the registrant for induction . . ."

order of the local board directing him to appear for induction was without legal sanction; and that, having exhausted the Selective Service process, he was entitled to raise these matters at his trial as a defense to the indictment. Before proceeding to a discussion of the principles of law embodied in the decisions of the Supreme Court in Billings v. Truesdell, *supra,* in Falbo v. United States, 320 U. S. 549, and decisions of lower federal courts in other cases, it is necessary to refer to pertinent Selective Service Regulations and their application to the facts as stated.

Estep offered the first substantial corroboration of his activities as an asserted minister of religion of the sect of Jehovah's Witnesses to the chief clerk of the local board, albeit after he had appealed, at the end of October or the beginning of November, 1942. This material included the affidavits of Hessler, Ferree and Reese. The clerk refused to receive these affidavits on a ground unfounded in fact: Section 615.43 of the Selective Service Regulations provides in part: "Every paper pertaining to the registrant except his Registration Card . . . shall be filed in his Cover Sheet . . ." Estep testified that he offered the affidavits in order that they might be sent by his local board to the appeal board to be considered by the latter in disposing of his case. He did not, as he now asserts, seek at that time to have his classification reopened by the local board. Had he been aware of the fact that his cover sheet had not gone to the appeal board, he would have been entitled to insist that the affidavits be received by the local board and his case given further consideration.

In view of the fact that Estep's cover sheet or file had not gone forward to the appeal board, the local board should have received the affidavits and put them in the cover sheet as required by Section 615.43 of the Regulations. Perhaps, the chief clerk of the local board without warrant in fact permitted Estep's counsel at the trial to attribute to him a base motive when he agreed that "Possibly" he might have lied to Estep. The clerk may have

meant nothing more than that he was mistaken in telling the registrant that his file had gone to the appeal board. Inquiry into the clerk's motives was terminated by the objection interposed by the United States Attorney. The learned District Judge erred in sustaining this objection if for no other reason than because the question would have thrown light upon the credibility of the witness. At the reargument of this cause before the court *en banc* Estep's counsel stated that he waived this ground for a new trial. He made plain, however, that he did not retreat from his position that the misinformation given by the chief clerk of the local board to Estep as to the status of the latter's file was a denial of due process of law.

It may be pointed out that Estep on February 22, 1944, knowing that the proffered corroborative material had been rejected in 1942, wrote to the local board and stated that he did not wish to add anything further to his file. It could be contended that by this admission Estep showed himself to be content with the rejection of the affidavits of Hessler, Ferree and Reese, that he was satisfied with his file as then constituted and that therefore any breach by the local board of Section 615.43 became immaterial. But statements made by a registrant should not be treated as an exercise in polemics to end that he may be trapped by his own lack of logic. Since the chief clerk of Estep's local board either lied to him or materially misstated facts with the effect that the registrant concluded that this corroborative material could not be received and therefore could not be considered either by the local board or the appeal board I think it is necessary to conclude that Estep in this regard was not afforded due process of law by the local board.

Whatever may have been Estep's attitude in respect to the rejection of the proffered corroborative material in 1942, in his letter of May 23, 1944 Estep stated to the local board that he had examined his file and had found certain

documents to be missing. He enclosed with his letter[4] eleven affidavits designed to corroborate his assertion that he was a minister of religion. These included the affidavits of Hessler, Ferree and Reese and eight additional affidavits. Estep also stated in his letter that he believed that the local board had not given sufficient consideration to his case and requested reconsideration of his I-A classification.

Section 626.2 of the Regulations provides in part: "The local board may reopen and consider anew the classification of a registrant . . . upon the written request of the registrant . . . , if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification . . . " The material enclosed by Estep with his letter of May 23 to the local board was corroborative though it also presented facts which were not considered by the local board when it made its original classification. The affidavit of Oliver G. Cuppett, asserting that Estep was the "company servant for the Uniontown company" of Jehovah's Witnesses, will serve as an example. Of course it may not be said that a consideration of this material necessarily would have required a change in Estep's classification. It might or might not have worked this result but the question was one for the local board to decide upon receipt of Estep's request for reclassification and an examination of the material submitted by him.

It seems probable that the local board did not receive the affidavits as a part of Estep's file or consider his request. As has been stated, the chief clerk of the local

[4] Estep's letter of May 23, 1944 and the accompanying documents are marked "Deft's Ex. 'A', 12/7/44 H. T.", but they were not admitted in evidence despite this designation by the clerk or stenographer of the District Court. Nonetheless the United States Attorney refers to these documents as if they were in evidence and had in fact been sent to the appeal board by the local board. The brief of the United States states, "On May 22, 1944 he [Estep] sent, by registered mail, additional evidence to his Local Board with a request that same be placed in his file and forwarded to his Appeal Board. On July 28, 1944, his file was forwarded to the Appeal Board."

board testified that though the letter of May 23 and the affidavits were in Estep's file they were "not a part of his file", and it is notable that of all the papers contained in Estep's cover sheet these documents alone were not stamped with the stamp of the local board. Section 626.3 of the Regulations provides in pertinent part: "When a registrant . . . files with a local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified . . . , it shall not reopen the registrant's classification. In such a case the local board, by letter, should advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and should place a copy of the letter in the registrant's file." The local board wrote no letter to Estep as required by the Regulation last quoted. From all these facts the inference could be drawn that the local board did not consider Estep's request or pass upon the corroborative material sent to it by him. Consideration of Estep's request and eamined the corroborative material material offered by him was a duty imposed upon the local board by the Act and the Regulations. Inquiry into the question of whether or not the local board considered Estep's request and examined the corroborative material was prohibited by the ruling of the court below. If the local board did not consider Estep's request for reclassification or examine the corroborative material offered by him, in my opinion under the circumstances, it denied him due process of law. It should be pointed out that the registrant undoubtedly assumed, as he had the right to do, that his request for reclassification and the eleven affidavits had been included in his cover sheet. It is clear that in this instance Estep was not informed by the local board that this material was not to be included in his cover sheet.

The chief clerk of the local board stated categorically that the material referred to was not forwarded to the appeal board. It follows therefore that the appeal board's *de novo* consideration of Estep's case could not cure a denial to him of due process of law by the local board.

One final question relating to the Regulations remains for discussion. Section 627.13 (b) provides in part, "In preparing . . . a summary [of the written information in the registrant's file], the local board should be careful to avoid the epression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision." The letter of July 28 written by the assistant clerk of the local board to the appeal board, quoted in material part at an earlier point in this opinion, violated this section. The letter was argumentative and contained expressions of opinion as to the information in the registrant's file. The regulation states that the local board "should be" careful to avoid the expression of opinion and "should refrain" from including any argument in support of its own decision and that other portions of Section 627.13 and the Regulations generally use the auxiliary verb "shall". But the auxiliary verb "should" should not be considered as merely precatory.[5] It was the intent of the framers of the Regulations by Section 627.13 (b) to make certain that an appeal board in considering the classifications of a registrant would embark upon that consideration unaffected by any observation, opinion, or argument of a local board. The Selective Service Regulations were intended to have and do have the effect of law. See Smith v. Richart (D. C. E. D. S. C.) 53 F. Supp. 582; United States v. Reckord, (DCDM) 51 F. Supp. 507, 510-513; United States v. Downer (CCA 2), 143 F. 2d 125. For analogy see United States v. Eliason Administratrix, 16 Pet. 291, 302; Nordmann v. Woodring,

[5] Webster's New International Dictionary states, "*Should* is everywhere used in the same connection and the same senses as *shall*, as its imperfect."

28 F. Supp. 573, 576. Cf. Standard Scale Co. v. Farrell, 249 U. S. 571, 577.

It may be argued that Estep has not shown that his cause was prejudiced before the appeal board by the letter of July 28. Such an argument is not entitled to weight. The selectee at his trial should not be permitted to bring the members of an appeal board before the court to show the basis of their classification of him. The President, authorized by Section 10 of the Selective Training and Service Act to prescribe the necessary rules and regulations to carry out the provisions of the Act, delegated this duty to the Director of Selective Service who promulgated the Selective Service Regulations. See Executive Order No. 9410, of December 23, 1943, 8 F. R. 17,319. The agency charged with the administration of the Act promulgated the regulation with which we are presently concerned. From its terms, the conclusion is irresistible that the Director determined that the expression of opinion or argument in support of its decision by a local board to an appeal board might prove prejudicial to a registrant. We should not look behind this ruling. I conclude therefore that the action of the clerk of the local board in sending the letter of July 28 to the appeal board for consideration of its contents constituted a denial of due process of law to Estep.

Having reached these conclusions, it is necessary to find and apply the correct principles of law to the facts of the case at bar. This requires a discussion of the two leading decisions of the Supreme Court; viz., Falbo v. United States and Billings v. Truesdell, *supra*. It will be noted that after the date of the Billings decision the Selective Service process was changed so that registrants were given physical examinations prior to being ordered to report for induction. See the Act of December 5, 1943, 50 U. S. C. A. Appendix Section 304a. Estep, as we have stated, was given a physical examination and was found to be acceptable by the Navy. Following the Supreme Court's decision

in the Billings case, and perhaps because of it, the process of actual induction was altered so that selectees reporting at the induction center were required to take "one step forward" when invited to do so by the officer in charge, the "one step forward" constituting a selectee's actual induction into the Army or Navy. See note 1, *supra*. The Billings case holds that the selectee is not "actually inducted" within the meaning of Section 11 of the Act, 50 U. S. C. A. Appendix Sec. 311. In the Billings case Mr. "ceremony or requirements of admission" have been prescribed; that until "actually inducted" the selectee is subject solely to civil jurisdiction and therefore may not be tried by court martial. It follows that if the selectee refuses to take "one step forward" when directed to do so by the officer in charge of induction, that refusal would constitute a violation of the order of his local board to report for induction and, if that order is valid, the selectee will incur the penalties prescribed by Section 11 of the Act, 50 U. S. C. A. Appendix Sec. 311. In the Billings case Mr. Justice Douglas stated, 321 U. S. pp. 558-559; ". . . it should be remembered that he who reports at the induction station is following the procedure outlined in the *Falbo* case for the exhaustion of his administrative remedies. Unless he follows that procedure he may not challenge the legality of his classification in the courts. But we can hardly say that he must report to the military in order to exhaust his administrative remedies and then say that if he does so report he may be forcibly inducted against his will. That would indeed make a trap of the *Falbo* case by subjecting those who reported for completion of the Selective Service process to more severe penalities than those who stayed away in defiance of the board's order to report. These considerations together indicate to us that a selectee becomes 'actually inducted' within the meaning of § 11 of the Act when in obedience to the order of his board and after the Army has found him acceptable for service he undergoes whatever ceremony or requirements of admission the War Department has prescribed."

In the Falbo decision, 320 U. S. pp. 554-555, Mr. Justice Black stated that Congress was not required to provide ". . . for judicial intervention before final acceptance of an individual for national service." He went on to say, "The narrow question therefore presented by this case is whether Congress has authorized judicial review of the propriety of a board's classification in a criminal prosecution for wilful violation of an order directing a registrant to report for the last step in the selective process. We think it has not. The Act nowhere explicitly provides for such review and we have found nothing in its legislative history which indicates an intention to afford it. The circumstances under which the Act was adopted lend no support to a view which would allow litigious interruption of the process of selection which Congress created. . . . Surely if Congress had intended to authorize interference with that process by intermediate challenges of orders to report, it would have said so."

Reading the Falbo decision in the light of Billings v. Truesdell, I think that the Supreme Court construed the Act to afford no judicial intervention to disrupt the Selective Service process but did not interpret its provisions to mean that there should be no judicial review of the Selective Service process when it had been completed. If it were otherwise how could the Falbo case serve as a "trap" to subject those who reported for completion of the Selective Service process to more severe penalties than those who stayed away from induction center in defiance of a board's order to report? The reference to a difference in possible penalties made by Mr. Justice Douglas is not an allusion to penalties which might be imposed by court martial as distinguished from those which might be imposed by civil tribunals for if the selectee refuses to report he remains subject to civil justice. I conclude therefore that Mr. Justice Douglas referred to the imposition of a penalty for failure to report for induction as distinguished from one imposed for refusal to be inducted after an order of a local

board requiring the selectee to report for induction. In the Falbo case Mr. Justice Black laid emphasis upon the necessity of not interrupting the Selective Service process, stating that there must be no litigious interruption of the process of selection which Congress had created; no intermediate challenge of orders to report.

But in the case at bar Estep exhausted the administrative procedures.[6] The Selective Service process was completed up to the final "one step forward" that a selectee must take to constitute his induction into the Armed Forces. At this point determination of the issue of whether or not a selectee had been awarded due process of law by the Selective Service agencies would not, in my opinion, constitute litigious interruption of the process of selection or an intermediate challenge to an order to report for induction. The question is not free from doubt, but as I read the Falbo and Billings decisions there may be judicial intervention to determine whether the selectee has been afforded due process if he be indicted for his refusal to be inducted. The Selective Service process having been completed to this point, if judicial intervention is ever permissible to protect a constitutional right it is here. If judicial intervention may not be availed of by the selectee at this juncture, it will never be available for the "one step" which the registrant must take to constitute his induction is a "voluntary" one. The word "voluntary" is used for want of a more apt adjective. While the one step forward is compulsory in the sense that the selectee is compelled to take it or become liable to the sanctions and penalties imposed by Section 11 of the Act, none the less the step forward is voluntary in that the selectee is under no physical compulsion to take it. He takes the step forward or does not take it as his will dictates. The statement of the inducting officer to the selectees, "You will take one step forward as your name is called and such step will constitute your

[6] It will be observed that Estep had no appeal to the President for the actions of both the local board and the appeal board were unanimous.

induction . . ." cannot be deemed to be a command for the selectee is not yet subject to martial authority. See the language of the Billings opinion quoted above. The words of the inducting officer therefore are nothing more than a request to the selectee that he take one step forward to constitute his induction.

If the selectee takes the step he subjects himself to the jurisdiction of the naval or military authorities and thereafter cannot avail himself of the writ of *habeas corpus* to test the question of whether the Selective Service agencies have afforded him due process of law for by subjecting himself to induction the selectee has deprived himself of his right to claim that he is subject to unlawful restraint by the naval or military forces. See McNally v. Hill, 293 U. S. 131 at p. 138, where Mr. Justice Stone stated, "Without restraint of liberty, the writ will not issue. . . . Equally, without restraint which is unlawful, the writ may not be used." If the selectee takes the one step forward he cannot thereafter assert that he did so under protest for, as we have shown, the inducting officer merely invites him to take the step. Compare United States v. Powell, 38 F. Supp. 183, 186. An analogy is presented by those cases in which the submission to custody was voluntary for the purpose of procuring the writ. See Baker v. Grice, 169 U. S. 284, 293-294; *Ex parte* Simon, 208 U. S. 144; United States v. Peckham, 143 F. 625; *Ex parte* Ford, 160 Cal. 334, 116 P. 757. See 39 C. J. S. Habeas Corpus § 10 and the authorities therein cited and 25 Am. Jur., Habeas Corpus, § 25. Cf. *Ex parte* Beach, 259 F. 956. It is the weight of authority that a writ of *habeas corpus ad subjiciendum* may not be awarded where the submission to restraint is voluntary. If the selectee who took the step forward thereafter refused to obey a lawful command of his superior officer and was held for court martial, it seems settled that he would not be entitled to be set at liberty by the writ. He would then be regularly in the custody of the military or naval authorities which would have juris-

diction to try him by military law for a military offense. Under such circumstances the civil courts could not intervene on his behalf. See United States v. MacDonald, 265 F. 695; *Ex parte* Dostal, 243 F. 664; *Ex parte* Beales, 252 F. 177; *Ex parte* Rock, 171 F. 240; and *In re* Davison, 21 F. 618.

It follows therefore that if the order of the local board directing the selectee to report for induction is invalid for any reason, unless the selectee can assert that invalidity as a defense to an indictment, he is indeed entrapped. Compare the decision of this court in United States v. Grieme, 128 F. 2d 811, and the very numerous decisions of like tenor. See for example United States v. Van den Berg, (CCA 7) 139 F. 2d 654; United States v. Sauler, (CCA 7) 139 F. 2d 173; and Harper v. United States, (CCA 5) 138 F. 2d 538. Cf. United States v. Rinko, (CCA 7) 147 F. 2d 1, and United States v. Flakowicz, (CCA 2) 146 F. 2d 874. I conclude that if the Selective Service process has been completed by the Selective Service agencies and the only incident remaining is submission to induction by the selectee, the selectee, who has refused induction, is entitled to assert as a defense to his indictment under Section 11 of the Act a denial to him of due process of law. No distinction can be made between the validity of the punitive sanctions imposed by Section 11 of the Act when invoked solely by reason of the violation of an induction order and the validity of the induction order itself. The punitive sanctions may not be said to be unassailable even though the induction order, the violation of which is the sole basis for imposition of the sanctions, is a mere nullity. If the induction order is a nullity because it has been directed to a selectee after failure of the Selective Service agencies to afford him due process of law, the punitive sanctions of Section 11 may not be imposed validly. Cf. *Ex parte* Catanzaro, (CCA 3) 138 F. 2d 100, 102, *cert. den.* 321 U. S. 793, and *Ex parte* Stanziale, (CCA) 138 F. 2d 312, *cert. den. sub. nom.* Stanziale v. Paullin, 320 U. S. 797. To hold other-

wise would be to deprive the registrant or selectee of his rights under the Selective Training and Service Act. Cf. United States v. Pitt, (CCA 3) 144 F. 2d 169, 173. No matter how arbitrary, capricious or biased the action of the Selective Service agencies might be, no relief could be afforded the selectee.

I can see no reason for concluding that Congress did not intend to afford complete protection to the selectee within the framework of the Selective Training and Service Act. Section 11 provides for the trial by the civil authority of any person who violates the Act and who has not been "actually inducted." In the Billings case, as has already been pointed out, the Supreme Court made it clear that the selectee was not subject to the military or naval jurisdiction until he underwent whatever "ceremony or requirements of admission" have been prescribed. If the selectee who has not been inducted may not be tried by court martial and must be tried by the civil authority, how can he ever assert denial of due process of law to him unless he can raise it as a defense at his trial? The majority of this court insist that the inducted man may raise the defense on application for writ of *habeas corpus*. Assuming (as I think is not the case) that having voluntarily submitted himself to the naval or military authorities the writ would lie on the inducted man's behalf, the ruling of the majority none the less renders the pertinent provisions of Section 11 meaningless for the statute requires the trial of the alleged delinquent in a criminal proceeding in a district court of the United States. If the defendant in such a proceeding, having exhausted his administrative remedies, cannot question the validity of the order upon which the punitive sanction sought to be applied to him is based, why should Congress require him to be tried in a court where such a defense would be available? Moreover, if the selectee who has not submitted to the military or naval authority cannot raise the defense of denial of due process of law at his trial, he can never raise it.

What has been said does not mean that a selectee may retry his classification on his indictment before a district court of the United States, or that he may adduce evidence at his trial to prove that he is a regular or ordained minister of religion entitled to exemption pursuant to the provisions of Section 5 (d) of the Act. These courses are prohibited to him. Evidence as to his status, if he claims exemption, must be submitted to his local board. He may offer evidence at his trial as a defense to the indictment that the Selective Service agencies, the local board or the appeal board, arbitrarily or capriciously refused to receive or consider evidence which he endeavored to submit as to his status. He may show by the material within his cover sheet that the local board or appeal board acted capriciously or arbitrarily in refusing to award him the status of an exempt registrant. He may produce evidence in court that material relevant to his status, timely offered by him, was rejected. He may show that members of the local board or appeal board are biased, prejudiced or disqualified under the Selective Service Regulations to sit in his case. He may show any or all of these things at his trial as proof that he was denied due process of law by the Selective Service agencies. Beyond this, he may not go.

Whether the selectee has or has not been afforded due process of law by the Selective Service agencies is a question of law for the court and must be determined by it as a legal conclusion though disputed questions of fact of course must be determined by the jury under proper instructions. A pure question of law arose in the case at bar in respect to the letter of July 28, 1944, admittedly sent by the local board to the appeal board. For analogy see United States v. Reckord, 51 F. Supp. at p. 510.[7] Because of the

[7] Judge Chesnut stated, "My *conclusion of law* is that the action of the Local Board in intentionally disregarding the applicable regulation and directive and thus including the petitioners in the July quota list was legally arbitrary and capricious; and the petitioners are entitled to be . . . released from custody."

letter of July 28, 1944 the trial court should have directed a verdict in favor of the defendant. If it were not for what I deem to be the legal effect of the letter, I would conclude that this court should reverse the judgment and remand the cause for a new trial in order that the other questions which I have referred to might be determined after submission of the rejected evidence. In view of the letter of July 28 it would be futile to order a new trial in the case at bar.

The judgment of conviction should be reversed. A reversal would not exempt defendant from prompt and proper action by the Selective Service agencies.

LEAHY, *District Judge*, concurring in the dissent.

I fully concur in the dissenting opinion of Judge Biggs that Estep was denied due process. Instead of reversing the judgment of conviction I think a new trial should be ordered.

Estep did not get an opportunity to prove at his trial that he had failed to get due process before the draft boards. It is novel doctrine that a constitutional right depends upon what procedural technic is selected for its protection or that Congress by enactment of the Selective Service Act or any other statute may regulate the protection of any one of the master rights given by the Constitution. Neither am I convinced the Supreme Court has made it law that Estep may only challenge invasion of his constitutional right of due process by submitting to an oath of induction and then applying for a writ of habeas corpus.

When indicted for crime, it is always permissible to bring a plea of constitutional infringement before the trial judge for his critical examination. If this is not so, then protection of constitutional rights must depend upon formalistic considerations of selection of the proper writ or forum where one may tell the story of denial of such

rights. If one compelled to stand criminal trial is not to be permitted to be heard on the *fact* of absence of due process, then the right is illusory. If the Court's views are accepted, Estep has lost his right to demand due process by default because he lacked the ability to distinguish between Falbo v. United States and Billings v. Truesdell. It is my view that the trial judge should have made inquiry upon the proffer of proof to ascertain if Estep did or did not receive due process. This, he failed to do.

A new trial should be ordered.

Correspondence between Illinois Selective Service Agencies concerning right to add new evidence to Cover Sheet after appeal had been taken to board of appeal.

[See Record pp. 208-213, *Rinko* v. *United States*, No. 1071, October Term 1944, certiorari denied, 65 S. Ct. 1086]

[Appeal Board No. 1 to Local Board No. 122]

SELECTIVE SERVICE SYSTEM
Illinois Board of Appeal No. 1
105 W. Monroe St., Chicago, Ill.
ADMINISTRATOR

June 24, 1943

Chicago Local Board No. 122
2229 W. Chicago Avenue
Chicago, Illinois

Re: Alexander Rinko
Order No. 819

Gentlemen:

I enclose letter to me from the above registrant together with six affidavits which accompanied it.

I am today writing to the registrant. The Board of Appeal may not consider evidence not in the file at the time it was received from the Local Board.

If upon receipt of the enclosure you desire to reopen the case, will you please advise us and we will return the file. If on the other hand, these do not in your opinion warrant a change in the classification, I suggest that they be returned to the Board of appeal for inclusion in the file.

Very truly yours,

WM. H. KING, JR., Administrator
Illinois Board of Appeal No. 1

[Handwritten notation in margin of above letter:]
JUN 26 1943
Letters *not* to be admitted as evidence, being filed after classification and appeal.

LOUIS STEINBERG
JAMES JAY
[Members of Local Board]

Classification to remain in 1-A-O.
Received June 30, 1943
Illinois Board of Appeal No. 1

Local Board No. 122 61
Chicago, City 731
JUN 28 1943 122
2229 West Chicago Ave.
Chicago, Illinois

[ALEXANDER RINKO to Appeal Board No. 1]

June 30, 1943

Mr. William H. King, Jr., Administrator
Illinois Board of Appeal No. 1
105 West Monroe Street
Chicago, Illinois

Dear Mr. King:

In re: My appeal from Board No. 122

I received your letter of June the 24th, last, on the 28th of June, and thank you for attention to my grievance, and for sending the affidavits back to the local board for consideration as to whether they wish to open the case of their own action.

However, I have learned indirectly that they will refuse to do so.

These affidavits were submitted to the board on June 14, 1943, within the ten days for completing my appeal, and I was told to bring them back the following Wednesday and deliver them to the appeal agent. When I returned Wednesday, Mr. Steinert, the clerk, told Mr. Rizzio, the appeal agent, that my affidavits had been refused by the board. Mr. Rizzio advised Mr. Steinert in my presence that they should not have been refused, but should have been included in my file. Mr. Rizzio then told me it was too late because the file was out of his hands.

The local board had no right to exclude my affidavits, therefore, will you please consider that the record before you now is incomplete and return the file to Local Board No. 122 with instructions to admit the affidavits?

Very truly yours,
ALEXANDER RINKO
2113 Lake Wood Avenue, Chicago, Ill.

[Appeal Board No. 1 to Illinois State Headquarters]

July 10, 1943

Major Baird V. Helfrich
Selective Service System
Armory Building
Springfield, Illinois

Re: Alexander Rinko
Chicago Board 122

Dear Baird:

Under date of June 18 I received a longhand letter from the above registrant enclosing six affidavits which he wished placed in his file. On June 24 I forwarded them to the local board who returned my letter with a notation in ink across the top. On June 24 I also wrote the registrant and received from him a reply under date of June 30. I am enclosing all of the items.

The appeal is now pending. The registrant is a member of Jehovah's witnesses and I should gather from the newspapers that he has been a source of difficulty from time to time. This however should not in any way prejudice his rights to a full and adequate presentation of his case to the Selective Service System.

I am writing you for your judgment as to whether or not the local board should receive these affidavits, and also whether in your opinion if the local board should receive them, should they forward them to the board of appeal in connection with the appeal now pending.

When you write would you be good enough to return all the enclosed papers.

Very truly yours,
WM. H. KING, JR., Administrator
Illinois Board of Appeal No. 1

[Illinois State Headquarters to Appeal Board No.1]

ILLINOIS STATE HEADQUARTERS
SELECTIVE SERVICE SYSTEM
Dwight H. Green, Governor
Paul G. Armstrong, Director
Armory Building

Springfield, Illinois

July 17, 1943

Honorable William H. King, Jr.,
Administrator, Illinois Board of Appeal No. 1,
105 West Monroe Street,
Chicago 3, Illinois.

Re: Alexander Rinko, Order No. 819,
Chicago City Local Board No. 122.

Dear Mr. King:

I return the enclosures submitted with your letters of July 10th in the above-entitled matter, indicating that the same should be enclosed in the file of the registrant and considered by the Appeal Board Group passing on this appeal case, since the Local Board does not care to reopen the case based on such evidence.

Respectfully yours,
For the State Director,
BAIRD V. HELFRICH,
Major, J. A. G. D.,
Legal Advisor

Enc.
cc—Chicago City Local Board No. 122
Lt. Colonel M. G. Buck.

[Appeal Board No. 1 to Illinois State Headquarters]

July 20, 1943.

Major Baird V. Helfrich
Selective Service System
Armory Building
Springfield, Illinois

Re: Alexander Rinko
Registrant No. 819
Chicago Board No. 122

Dear Baird:

I have your letter of July 17th concerning the above, but I do not understand it. The local board has taken the position that the affidavits are not to be included in the file on appeal, and in this it seems to me that they are technically correct, even though I might differ with them as to the wisdom of their decision. Such being the case, I am not clear on what basis I can now insert them in the file.

Please let us have your impression as soon as you can.

Very truly yours,
WM. H. KING, JR., Administrator
Illinois Board of Appeal No. 1

WHKjr:ea

[Illinois State Headquarters to Appeal Board No. 1]

July 23, 1943

Honorable William H. King, Jr.,
Administrator, Illinois Board of Appeal No. 1,
105 West Monroe Street,
Chicago 3, Illinois.

Re: Alexander Rinko
Order No. 819
Chicago City Local Board No. 122

Dear Bill:

If the Local Board has taken the decision that the affidavits in question are not to be included in the file on appeal, they are wrong, in the opinion of the writer, under Section 623.2, Regulations, for this is routine information that the registrant wishes to be included in his file, and the Local Board cannot exclude any such information, under the provisions of the above Section, (or it would then be in the Local Board's discretion as to just what information they would allow a registrant to submit.)

Consequently, probably the simplest way to handle these affidavits is to treat them as having been reviewed by the Local Board and reopening refused, so that they can now be included in the file and obtain a final decision from the Appeal Board.

Respectfully yours,
For the State Director,
BAIRD V. HELFRICH,
Major, J. A. G. D.,
Legal Advisor

cc—Chicago City Local Board No. 122
Lt. Colonel M. G. Buck

FILE COPY

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

No. 292

■

WILLIAM MURRAY ESTEP, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

■

Petitioner's
REPLY TO MEMORANDUM IN OPPOSITION
to Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

HAYDEN C. COVINGTON
Attorney for Petitioner

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

No. 292

■

WILLIAM MURRAY ESTEP, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

■

Petitioner's
REPLY TO MEMORANDUM IN OPPOSITION
to Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

TO THE SUPREME COURT OF THE UNITED STATES:

The Government says that the broad question presented in this case as to the reviewability of the illegality of the draft board's action in defense to the indictment is presented in *Smith* v. *United States* (CCA-4) 148 F. 2d 288, No. 66 October Term 1945 in this court. It is suggested that the court withhold decision on the petition for writ of certiorari until that case is decided.

Petitioner objects to such suggestion.

The court is requested to pass upon the petition for writ of certiorari now and grant the same in order that petitioner's rights can be determined upon the record made in the courts below without regard to the record in the *Smith* case. That case may be decided

on an entirely different question. There it is contended that Smith was erroneously convicted of refusal to submit to induction under an indictment charging him with failure to report for induction. On this question the court is referred to the petition for writ of certiorari in the *Smith* case, pages 11-17, 20-31. (See, also, opinion of the court in the *Smith* case, Record pages 61-64.)

This case presents squarely the issue of whether or not there has been denial of constitutional rights by the draft boards. The Government has conceded in other cases that the scope of inquiry in judicial review of draft-board determinations is confined to instances where there has been a violation of due process of law. The petitioner contends in this case that there has been a rank violation of procedural due process. This brings him within the narrow scope of review said by the Government to be permitted in review of draft-board determinations.

Even though the *Smith* case is to be decided on the ground of reviewability in criminal prosecutions of the actions of draft boards, still the *Smith* case does not present the same issue that is posed in this case. The distinctions and differences between the *Smith* case and this case require that the court overrule the suggestion made by the Government to withhold decision on the petition for writ of certiorari. These considerations should impel the court to act now on the petition for writ of certiorari and grant the same, in order that the questions presented here can be considered along with the questions urged in the *Smith* case.

Respectfully submitted,
HAYDEN C. COVINGTON
Counsel for Petitioner

September 17, 1945

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 292

WILLIAM MURRAY ESTEP, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

MEMORANDUM FOR THE UNITED STATES

On September 20, 1944, petitioner was indicted (R. 1) in the United States District Court for the Western District of Pennsylvania in one count charging that he knowingly failed to submit to induction as directed by the order of his local board, in violation of Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. App. 311). The evidence at the trial showed that petitioner registered with his local board on June 30, 1942, and that he filed his Selective Service questionnaire on August 22, 1942 (R. 6). In that document he stated that he was twenty years old; that he had been a

minister of Jehovah's Witnesses since March, 1936; that he was conscientiously opposed to all war; that he had had no schooling other than eight years of elementary school and four years of high school; and that he had worked as a mason's helper in 1941 (R. 161–164). On October 3, 1942, he was classified 1–A by his local board by unanimous vote, and on August 2, 1944, he was finally classified 1–A by the unanimous vote of his Board of Appeal (R. 6, 164–165).[1] On September 1, 1944, the local board sent petitioner an order to report for induction on September 11, 1944 (R. 8). Petitioner reported on that date and was transported to the induction station where he was found acceptable to the Armed Forces (R. 31). He declined, however, to undergo the induction ceremony on the ground that he was entitled to exemption from military service as a minister of religion (R. 32–34, 38–39).

Testifying in his own defense, petitioner admitted that he refused to submit to induction (see R. 103–113). His proffered defense was that his local board and appeal board had improperly classified him and that the local board had departed from the Selective Service Regulations in handling his case (see R. 25–30, 42–52,

[1] The decision of the Board of Appeal was delayed by the fact that shortly after petitioner was classified 1–A by his local board his file was inadvertently misplaced or lost and was not found until sometime in 1944 (R. 9–10).

55–59, 61–64, 67–74, 79–97). The district court declined to recognize this defense and instructed the jury that "we must accept [the Selective Service classification] as a proper classification; and the only issue we have to determine in this case is whether or not this defendant complied with the law by submitting to induction or not" (R. 147). Petitioner was convicted (R. 156)[2] and was sentenced to imprisonment for five years (R. 160).

Upon appeal to the Circuit Court of Appeals for the Third Circuit, sitting *en banc*, the judgment of the district court was affirmed by the vote of four judges (R. 281–306, 307), with two judges dissenting. The opinion of the court held that petitioner was required to complete the Selective Service procedure before he could challenge the action of the Selective Service System in the courts by resorting to habeas corpus, and that the procedure was not completed until the induction order was complied with by submitting to induction (R. 281–289). The dissenting judges were of the view that the Selective Service procedure had come to an end when petitioner's acceptability to the Armed Forces was ascertained; that he was there-

[2] Pursuant to stipulation of the parties (R. 154–155) that since a unanimous verdict was unobtainable, the case should be decided by a majority verdict of the jury, the court accepted the vote of eleven of the jurors as the verdict (R. 155–156).

fore entitled to attack his classification in defense of the prosecution in his criminal trial; and that if petitioner had submitted to induction, he would have voluntarily placed himself under military jurisdiction and habeas corpus would not be available to test the legality of the administrative action. (R. 289–306.)

It is petitioner's contention in this Court, as it was in the courts below, that by reporting to the induction station, where his acceptability to the Armed Forces was ascertained, he fully completed the selective process and that he was therefore entitled to challenge the legality of the induction order in his criminal trial. We agree with the opinion of the court below (R. 281–289) that the rationale of *Falbo* v. *United States*, 320 U. S. 549, requires that the induction order must be unhesitatingly obeyed. Only after the registrant has submitted to induction is the process of the Selective Service System at an end and it is only then that he may resort to the courts to challenge the legality of the administrative proceedings. The considerations in support of the Government's position were fully argued in the Circuit Court of Appeals and they are fully discussed in the opinion of the court. In these circumstances, no useful purpose would be served in reasserting them in this memorandum. Suffice it to say that the Government agrees with the opinion of the Circuit Court of Appeals.

It is to be noted that the broad question presented here as to the reviewability in a criminal prosecution of the proceedings and actions of the Selective Service authorities is, we think, involved in *Smith* v. *United States,* 148 F. (2d) 288 (C. C. A. 4), No. 66, this Term, which is presently pending before the Court on writ of certiorari. Since the *Smith* case is shortly to be argued, the Court may desire to withhold decision on the instant petition for a writ of certiorari until that case is decided.

Respectfully submitted.

HAROLD JUDSON,
Acting Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

SEPTEMBER 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 292

WILLIAM MURRAY ESTEP, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 281–289) and dissenting (R. 289–306) opinions of the Circuit Court of Appeals are reported at 150 F. 2d 768.

JURISDICTION

The judgment of the circuit court of appeals was entered on July 6, 1945 (R. 307). The petition for a writ of certiorari was filed on August 3, 1945, and was granted on October 8, 1945 (R. 309). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See

also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

In a criminal prosecution under the Selective Training and Service Act of 1940 for having failed to submit to induction, was petitioner entitled collaterally to challenge the validity of the induction order on the grounds that on the evidence before the appeal board he had been improperly denied exemption from service under the Act as a minister of religion and that there were administrative irregularities in the consideration of his case?

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Selective Training and Service Act of 1940, as amended, and of the Selective Service Regulations, are set forth in Appendix A and Appendix B, respectively, of the brief for the United States in *Smith* v. *United States,* No. 66, this Term, pp. 57–60, 61–91.[1]

STATEMENT

On December 8, 1944, petitioner was convicted (R. 155–156) in the United States District Court for the Western District of Pennsylvania for

[1] We have separately set forth in Appendix A, *infra*, pp. 30–40, those Selective Service Regulations which are material to the consideration of asserted irregularities in the consideration of petitioner's case by the local board and the appeal board.

having knowingly refused to submit to induction into the United States Navy as was required of him by the order of his local board, in violation of Section 11 of the Selective Training and Service Act of 1940, as amended;[2] he was sentenced to imprisonment for a term of five years (R. 160). His appeal to the Circuit Court of Appeals for the Third Circuit was first argued before a court of three judges and subsequently, at the instance of the court, was reargued before the court sitting *en banc* (R. 279–280). On the appeal, the judgment of the district court was affirmed by the vote of four judges, with two judges dissenting (R. 281–306, 307).

The opinion of the court held that petitioner was required to complete the Selective Service procedure before he could challenge the action of the Selective Service System in the courts by resorting to habeas corpus, and that the procedure was not completed until the induction order was complied with by submitting to induction (R. 281–289). The dissenting judges were, *inter alia*, of the view that the Selective Service procedure had come to an end when petitioner's acceptability to the armed forces was ascertained; that he was therefore entitled to attack the induction order in defense of the prosecution in his criminal trial;

[2] Pursuant to stipulation of the parties (R. 154–155) that since a unanimous verdict was unobtainable, the case should be decidetl by a majority verdict of the jury, the court accepted the vote of eleven of the jurors as the verdict (R. 155–156).

and that if petitioner had submitted to induction, he would have voluntarily placed himself under military jurisdiction and habeas corpus would not have been available to test the legality of the administrative action (R. 289–306).

The failure to submit to induction.—The facts adduced at the trial relating to the failure to submit to induction are undisputed. On September 1, 1944, after petitioner had been finally classified I–A by his board of appeal, the local board sent him an order to report for induction (Gov. Ex. 2, R. 165–166), notifying him that he had been selected for military service and directing him to report for induction on September 11, 1944 (R. 8). On that date petitioner reported to the local board and he was furnished transportation to the induction station (R. 8). Petitioner testified that he went through the process at the induction station by which his acceptability to the armed forces was determined (R. 104–105; see also R. 31, 35–36), but that when he was given a choice as to which branch of the Navy he desired to enter, "I told the officer in charge there that I had no choice * * * that I was an ordained minister of the gospel * * *" (R. 105–106). Petitioner presented to one of the officers a letter (R. 38–39) explaining his position, but the officer returned it and directed petitioner to return to the induction station on the following day (R. 106).

Petitioner reported back the next day and he was given various papers to fill out preparatory

to his induction into the Navy. When he reached one which contained an oath that he agreed to support the United States Government in time of war and that he would submit to the command of the President, as commander in chief, he declined to sign it. He explained to an officer at the induction station that, "I was an ordained minister of the gospel and that my occupation was that of preaching the gospel of the kingdom, and that I was merely complying with the Selective Service regulations by appearing there that morning and filling out the various forms and going through the various forms of procedure of induction." (R. 107.) At this point in the procedure, petitioner explained to another officer his reason for refusing to sign the oath and he gave him the letter (*supra,* p. 4) explaining his position.

The letter (R. 38–39) was addressed "To Officer in Charge, Induction Station" and recited that, "I am reporting to this induction center because I am required by law and by the decision of the Supreme Court so to report"; that he was a minister and would obey all laws which did not require him to give up the ministry; that he was entitled to exemption from service and he therefore could not be required to submit to induction; and that "Since the Supreme Court has said that the military authorities cannot forcibly induct me, I ask the Commanding Officer to release me after I have complied with all the orders of the induction station up to submission to actual in-

duction in order that I might make my defense in Federal Court." Petitioner was taken to the Commanding Officer of the induction station, where he explained again that he reported to the induction station to "exhaust my administrative remedies" (R. 110). The commanding officer read to petitioner the appropriate regulations relating to the induction ceremony and then directed petitioner to submit to induction by stepping forward (the method of induction at that time; see R. 290) when his name was called. He called petitioner's name and petitioner replied, "I refuse to take the step forward, because I refuse to be inducted into the Navy" (R. 34, 110). Petitioner was then notified that he was free to leave the induction station (R. 32–38, 107–113).[3] When petitioner was subsequently questioned by an agent of the Federal Bureau of Investigation he told the agent that by his course of conduct he had placed himself in a position to have a good defense when his case came to trial (R. 40–41).

The selective service classification.—Petitioner sought in defense of the indictment (R. 1) to show that as a Jehovah's Witness he was a minister of religion and that because the classifying agencies acted arbitrarily and capriciously, and because of claimed irregularities in the treatment of the case by the local board, he had been im-

[3] On cross-examination petitioner testified that the commanding officer had been "very polite" and had been "a gentleman all the way through" (R. 112).

properly denied exemption from service under the Act. To this end, he offered his entire selective service file in evidence, as well as independent testimony calculated to show that he was a minister of religion. The trial court was of the view that the induction order was not open to collateral attack in the criminal trial (see, *e. g.*, R. 18–19) and, accordingly, it rejected the independent testimony as to petitioner's ministerial status (R. 66–74) and excluded those documents in the selective service file which related solely to the question of petitioner's ministerial status (see R. 45–50). The court instructed the jury that "we must accept [the selective service classification] as a proper classification; and the only issue we have to determine in this case is whether or not this defendant complied with the law by submitting to induction or not" (R. 147). The evidence adduced at the trial bearing on the action of the Selective Service System may be summarized as follows:[4]

[4] The trial court received in evidence every document in petitioner's selective service file, except Defendant's Exhibits A (R. 167–189), C (R. 192), D (R. 193), F (R. 200–211), J (R. 218) and N (R. 224) which were offered by petitioner and excluded on objection by the Government that they had no evidential value (see R. 45–52). Dissenting Judge Biggs, who alone discussed the contents of the selective service file in detail (R. 289–290), did not, for purposes of the appeal, distinguish between those documents which were received in evidence and those which were offered but rejected. We shall proceed on the same basis in detailing the sequence of events in the classification proceedings.

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Petitioner registered with Local Board No. 4, Washington County, Pennsylvania, on June 30, 1942 (R. 6). On August 22, 1942 (R. 6) he filed the selective service questionnaire (Gov. Ex. 1, R. 161–165) in which he stated that he was twenty years old; that he had a high school education; that his present occupation was that of a minister and that he had one year's experience in the work; that for a time in 1941 he worked as a mason's laborer; that he had been a minister of Jehovah's Witnesses since March 1936, and that he had been ordained on October 1, 1942;[5] that he was conscientiously opposed to war in any form;[6] and that in his opinion he should be classified in IV–D, the classification given ministers of religion. He attached to the questionnaire a statement (R. 214–215) explaining his status in the Jehovah's Witnesses sect, and at the same time he filed an occupational questionnaire (Def. Ex. B, R. 190–

[5] Petitioner advised the local board at a later time that he was ordained on October 1, 1941, and that the 1942 date in the questionnaire was a mistake (see R. 201).

[6] Petitioner notified the local board, however, that he asserted a claim to conscientious objection only in support of his claim for classification as a minister of religion and that he did not desire classification as a conscientious objector (see R. 200; Def. Ex. I, R. 217). In the conscientious objector form which he submitted (Def. Ex. E, R. 196) petitioner stated that "I believe in the use of force in defense of my life and property and in defense of my family and fellow Christians * * *."

191) in which he also claimed to be a minister of religion.[1]

On October 3, 1942, petitioner was classified I–A (available for military service) by his local board. On October 10, petitioner wrote the board a letter (Def. Ex. D, R. 193–194) requesting that he be given a hearing and enclosing a copy of a certificate that he was associated with the Watchtower Bible and Tract Society (Def. Ex. C, R. 192–193) and another issue of "Consolation" containing an article "Jehovah's Witnesses—Ordained Ministers" (R. 98). On October 21, petitioner was given a hearing before the local board and a transcript was taken of his interrogation at that time (Def. Ex. F, R. 200–211). Petitioner stated at the hearing, *inter alia*, that although he claimed to have been ordained as a minister on October 1, 1941, his name was not included in the list of ministers furnished the Selective Service System by the Watchtower Bible and Tract Society until after October 1, 1942 (R. 201); that he received his ordination "by performing the work of Heavenly faith" (R. 209); that he never preached sermons or acted as chairman of the local meetings of Jehovah's Witnesses, even when the regular chairman was absent (R. 206); that his work con-

[1] The questionnaire apparently was also accompanied by a copy of "Consolation," a magazine published by the Watchtower Bible and Tract Society, which contained material calculated to show that Jehovah's Witnesses are ministers of religion.

sisted of going from house to house and preaching to the people by "taking a phonograph [record of a lecture by Judge Rutherford] which we carry and play it in front of their door" (R. 203);* that he devoted two hours on Saturdays to distributing literature (R. 204); that ministers in the Jehovah's Witnesses sect received no fees or money, and that he was dependent upon his father for support (R. 203–204); that he worked as a mason's laborer with the Carnegie-Illinois Steel Corporation until October 1, 1941, and at that

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* A portion of the inquiry concerning petitioner's activities was as follows (R. 202):

Mr. Davidson:

Q. What would be your daily activities in your work?

A. Well, as I stated, our work is to preach the God's Kingdom from house to house.

Mr. Reese:

Q. Take last week and give us the itinerary. What did you do last week?

A. I don't recall exactly.

Q. Give us the high points of the activities?

A. I just don't recall what I did do last week.

Q. Do you recall what you did on Monday and Tuesday of last week?

A. No, I don't recall.

Q. On the 14th can you recall what you did?

A. Not especially.

Q. On the 15th, 16th, and 17th can you give us an outline of your itinerary?

A. Starting on Monday, week before last, I was active in this work especially Monday, Tuesday, and Wednesday. I can't state exactly whether it was last week or the week before. My brother and I were active in the rural section of Washington [county].

time he decided to devote his full time to the ministry (R. 211). After petitioner had outlined his claim to ministerial classification and his activities at the hearing he was asked by a member of the board whether there was anything else he wished to state to the board before he left and he replied, "No" (R. 210–211).

On the day following his appearance before the local board petitioner was advised that "this board after carefully considering your case have refused you a change of classification as a minister" (Def. Ex. G, R. 212). On October 27, 1942, petitioner filed a notice of appeal and in the notice he designated what he believed to be pertinent information in his file in support of his claim (Def. Ex. H, R. 213; R. 99).

In November 1942, petitioner offered to the local board's clerk, for transmission to the appeal board (R. 100), his affidavit and the affidavits of three other Jehovah's Witnesses in support of his ministerial claim (R. 175–181).* He testified that, "I was told that it was impossible to file these affidavits, as my case had then gone up before the Appeal Board" (R. 100; see also R. 16). At this stage of the proceedings, the exact

*Petitioner is mistaken in his statement (Br. 21) that he filed the affidavits in question at the same time that he took the appeal. In the trial court, although his counsel suggested that the affidavits were filed in October 1942, petitioner testified that the affidavits were offered to the local board in the "first part of November" (R. 100).

time not being fixed, petitioner's selective service file was misplaced (R. 14) and nothing further occurred in connection with his classification until February 1944 (R. 100–101), when the local board sent petitioner a form for conscientious objectors, which petitioner returned unanswered, stating, *inter alia*, that "I do not wish to add anything further to my file at this time as the information it now contains fully explains my position as a minister * * *" (Def. Ex. I, R. 217).[10]

In April 1944, petitioner was ordered by the local board to report for a preinduction physical examination (Def. Ex. K, R. 220) as a preliminary step to consideration of his case by the appeal board (Reg. 627.14, *infra*, pp. 39–40). He reported and was found physically fit for service in the Navy[11] (Def. Ex. L, R. 221). Thereafter, petitioner examined his selective service file and learned that his case had not yet been considered by his board of appeal (R. 101–102). Accord-

[10] Petitioner had filed such a form in 1942 shortly after he registered (Def. Ex. E, R. 194–199). The reason for requesting him to file a new questionnaire in 1944 does not appear from the record or the selective service file.

[11] At the time of *Falbo* v. *United States*, 320 U. S. 549, the selective service process included a preliminary examination by a doctor attached to the local board, but it did not include a preinduction examination at the induction station. The selective service procedure was changed in January 1944, to provide for a preinduction physical examination at the induction station, as well as a final one when the registrant reports for induction. See *Billings* v. *Truesdell*, 321 U. S. 542, 554–555.

ing to petitioner, part of the file was missing (but see *infra,* pp. 19–20), and on May 23, 1944, he undertook to supply the local board with copies of the allegedly missing documentary evidence, together with additional evidence in support of his claim to classification as a minister of religion, including his statement and the three affidavits which he had been unable to file in November 1942, after he had been classified by the local board (see *supra,* p. 11) (R. 102–103; Def. Ex. A, R. 167–189). The proffered evidence was accompanied by a letter to the local board, dated May 23, 1944, requesting the local board to reconsider petitioner's classification and to classify him in IV–D, and it further requested that, if the local board refused to classify him as a minister, the letter be treated as an appeal to the board of appeal (R. 167–168). The local board apparently did not entertain the application to reopen the classification. The chief clerk of the local board, testifying as a witness for petitioner, testified that this material was received but was not placed in the file as part of the evidence for consideration by the board of appeal (R. 42).

On July 28, 1944, the file was forwarded to the appeal board and on August 2, 1944, the appeal board by a vote of 4 to 0 classified petitioner I–A (Def. Ex. M, R. 222; Def. Ex. O, R. 226). Upon being notified of his classification, petitioner requested the State and National Directors of

Selective Service to review his case (Def. Ex. Q, R. 229–231). On September 4, 1944, petitioner was advised by the State Director that "Your case was carefully reviewed at this Headquarters after the board of appeal rendered its decision, and it was then determined that no action on our part would be justified. We have carefully considered your letter of August 31, 1944 (R. 229–230), and still do not deem any action on our part justified in your case" (Def. Ex. R, R. 233). The order to report for induction (*supra*, p. 4) was issued at this stage of the proceedings.

SUMMARY OF ARGUMENT

As in *Smith* v. *United States*, No. 66, with which this case has been consolidated for argument, it is the Government's position, in reliance upon the considerations advanced in *Falbo* v. *United States*, 320 U. S. 549, that petitioner was not entitled to defy his induction order for the purpose of challenging its validity in a criminal prosecution under the Act. The induction order is one of those instances in the law in which the citizen must obey the order before resorting to the courts to contest its validity. Petitioner's argument that this case differs from the *Falbo* case because he had reached the point in the selective service procedure where his acceptability to the Navy had been finally ascertained, while the petitioner in the *Falbo* case withdrew from the process at

an earlier point, may be conceded. But the distinction, we submit, does not demand the application of a different rule here. In both cases the selective service procedure was disrupted before the defendant had fully complied with the induction order of his local board. Remission of a registrant to his remedy by way of habeas corpus after induction insures to him his day in court without litigiously interrupting the mobilization program and preserves his services for the armed forces in the event that he is mistaken in his contention that the induction order is invalid.

In the Argument (*infra*, pp. 19–29), we demonstrate that petitioner's contention that he was denied procedural due process is unfounded. In any event, this contention does not in principle distinguish this case from the *Smith* and *Falbo* cases. Petitioner's contention is that the appeal board failed to consider material evidence which he submitted and that it considered other incompetent evidence. In substance, this is no different from the contention in the *Falbo* and *Smith* cases that, because of an antipathy to the Jehovah's Witnesses sect, the classifying board disregarded the evidence before it and acted in an arbitrary and capricious manner. In either event, if the defense is available and is sustained, the classification must be set aside and conversely if the defense is not open in the *Falbo* and *Smith* cases, there is no room for its assertion in this case.

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ARGUMENT

HAVING REFUSED TO SUBMIT TO INDUCTION, PETITIONER WAS NOT ENTITLED TO CHALLENGE THE PROPRIETY OF HIS SELECTIVE SERVICE CLASSIFICATION IN HIS CRIMINAL TRIAL. HABEAS CORPUS AFTER INDUCTION IS THE EXCLUSIVE REMEDY TO TEST THE CONSTITUTIONALITY OF THE INDUCTION ORDER

A. THE AVAILABILITY OF THE DEFENSE IN THE CRIMINAL TRIAL

The fundamental question presented is whether a selective service registrant who, with a view to testing the legality of his selective service classification, intentionally violates his induction order by refusing to submit to induction, may collaterally attack the induction order as a defense in his criminal trial for having failed to perform a duty under the Act. In the courts below petitioner urged that the doctrine of *Falbo* v. *United States*, 320 U. S. 549, is not applicable where, as here, the defendant reports to the induction station but refuses to submit to induction. Both courts, however, agreed with the view advanced by the Government in reliance on the considerations set forth in the *Falbo* decision that where the induction order is valid on its face, the registrant is obliged to obey it. Under that view, when the registrant has taken the last step required of him by the induction order and has submitted to induction, he becomes subject to military jurisdiction and is free to test the validity of the induction order by resorting to habeas corpus. Since this, we think, is what Congress intended and what the *Falbo* decision recognized, we reassert the same

view in this Court. The arguments in support of our position are stated, *in extenso*, in the brief for the United States in *Smith* v. *United States*, No. 66, with which this case has been consolidated for argument. The Court is respectfully referred to that brief, pp. 31–56.[12]

We are mindful of petitioner's argument (Br. 194–202), that this case differs from the *Falbo* and *Smith* cases, *inter alia*, in that, in addition to claiming that he was arbitrarily classified, petitioner urges also that he was denied procedural due process. We shall demonstrate that petitioner was not denied procedural due process (*infra*, pp. 19–29), but assuming, *arguendo*, that the contrary is true, we think that the distinction which he urges does not aid him. Cf. *Yakus* v. *United States*, 321 U. S. 414, 446–447.

In the *Falbo* case it was urged that the classification was invalid because it was without evidentiary support and because the local board was prejudiced against Jehovah's Witnesses and failed to admit certain evidence which Falbo offered. (See 320 U. S. 551, 555, 556, 557.) As we interpret the petitioner's position in the *Smith* case, he too urges that he was denied classification as a minister of religion because the local board was prejudiced against Jehovah's Witnesses. In both cases the substance of the complaint was that the

[12] See generally, Elliff, *Jehovah's Witnesses and the Selective Service Act*, 31 Va. L. Rev. 811.

classifying agency did not act on the basis of the evidence before it. We think that petitioner's claim is, in substance, no more than this. As we understand his position, he predicates his claim that he was denied procedural due process principally on the proposition that his letter of May 23, 1944, together with the accompanying affidavits, should have been submitted by the local board to the appeal board for its consideration in passing on petitioner's appeal and that the local board departed from the Selective Service Regulations when it submitted to the appeal board a letter giving the local board's reasons for classifying petitioner I–A. In other words, petitioner is urging that the appeal board did not have an opportunity to consider evidence which it should have considered and that it had before it a letter which it should not have considered. We think that this asserted defect is of the same character as the claims in the *Falbo* and *Smith* cases; that there is no substantial difference between a claim that because of prejudice or for any other reason the classifying board totally disregarded the evidence before it and a claim, such as is advanced in this case, that (1) the classifying board disregarded the evidence and (2) that it acted without having before it pertinent evidence in the case. In either instance, if the defense is available and is sustained, the classification must be set aside. And conversely, if the defense is not open in the *Falbo* and *Smith* cases, there is no room for its assertion in this case.

B. THE ASSERTED DENIAL OF PROCEDURAL DUE PROCESS

As we have stated, petitioner maintains in this Court, as he did in the courts below, that he was denied procedural due process by the Selective Service System. While we believe that the claim is immaterial to the disposition of this case, the charges are of such a serious character that we are not disposed to let them pass without controverting them. Our examination of the selective service cover sheet in this case (see R. 42; Gov. Exs. 1 and 2 and Def. Exs. B–S and U–W, R. 161–166, 190–238, 240–243) convinces us that while certain administrative irregularities, such as the loss of the file, exist in the case, none prejudiced petitioner and none is of due process stature. In the discussion which follows we shall deal with each such claim which petitioner advanced in the administrative and judicial proceedings.

1. *The allegedly missing evidence.*—In his letter of May 23, 1944, to the local board, petitioner stated (R. 167):

> I went over my Selective Service file yesterday and found that certain statements which had been attached to my questionnaire; ministerial certificate from the Watchtower Bible & Tract Society dated December 24, 1941; copy of "Consolation" magazine No. 569 (containing an article setting forth the opinion of National Headquarters of Selective Service concerning Jehovah's witnesses as ordained ministers);

> letters of October 10 and October 27, 1942 to Local Board No. 4; and copy of letter from Local Board No. 4 dated October 22, 1942, are all missing from my file. I have prepared copies of these letters and statements and attach them hereto.

Our examination of the selective service cover sheet reveals that each of the allegedly missing documents is contained in the cover sheet and the local board's clerk testified at the trial that no papers were lost from the file (R. 10) and that these documents were before the Board of Appeal when that board considered petitioner's case, even though the duplicates prepared by petitioner were not placed in the file (see R. 42). The following is a list of the documents claimed by petitioner's letter to have been missing and the places where they may be found in the record:

1. Statement attached to questionnaire—Def. Ex. H, R. 214–215.

2. Ministerial certificate from the Watchtower Bible and Tract Society, dated December 24, 1941—Def. Ex. C, R. 192–193.

3. Copy of "Consolation" magazine, No. 569—Def. Ex. D, R. 193–194 (see original exhibit for the text of the magazine).

4. Letters of October 10 and 27, 1942, to the local board— Def. Ex. D, R. 193–194 and Def. Ex. H, R. 213.

5. Letter of October 22, 1942, from the local board—Def. Ex. G, R. 212.

2. *The rejected evidence.*—Petitioner's principal specification of error upon which he predicates his contention that he was denied procedural due process is the refusal of the local board to accept his letter of May 23, 1944, together with the new affidavits which were attached to it (*supra*, p. 13) and to include them in the materials forwarded to the board of appeal for consideration by it in deciding his appeal.[13] Petitioner urges that the local board was obliged to do this on the theory that the letter was a proper request under Section 626.2 of the Selective Service Regulations (*infra*, pp. 33–34) that the local board reopen his classification and consider the additional evidence tendered by petitioner. The opinion of the court below did not reach this question, but the dissenting opinion (R. 294–299) of Judge Biggs took the view that the letter should have been treated as a request to the local board to reopen the classification and that the local board was obliged to act upon it and to place it in petitioner's cover sheet so that it also would be considered by the board of appeal.

We believe that under the Selective Service Regulations petitioner's taking of an appeal deprived the local board's classification of any element of finality and foreclosed petitioner from

[13] Since the affidavits offered to the local board for transmittal to the appeal board in November 1942 (*supra*, p. 11) were included in the documents attached to the letter of May 23, 1944, we shall not undertake to discuss them separately.

demanding that the local board reopen his classification at that time or receive additional evidence for consideration by the board of appeal. As we construe the regulations, the appeal board is required to decide the appeal on the basis of the evidence considered by the local board in making its classification and only after the classification has become final, either by decision on the appeal or by failure to appeal from the local board's classification, is the registrant entitled as of right to demand that the local board entertain an application to reopen the classification for consideration of new evidence. Cf. *Cramer* v. *France*, 148 F. 2d 801, 804 (C. C. A. 9).

The Selective Service Regulations relating to the reception of evidence and the classification of registrants reflect two important considerations. They seek to afford the registrant adequate opportunity to adduce evidence in support of his claim, but at the same time, in recognition of the imperative need for mobilizing manpower in the shortest practicable period, the regulations require that the registrant shall act with reasonable dispatch in presenting his case and in taking his appeal from the local board classification. Thus Section 625.1 (a) (*infra*, pp. 30–31) provides that after the local board has classified the registrant on the basis of the evidence before it, he may as of right request one personal appearance before the board and adduce additional evidence in support of his

claim. If his classification remains unchanged after that hearing, the Act and regulations establish an appellate machinery for the further consideration of the registrant's claim (see Brief for the United States in *Smith* v. *United States*, No. 66, pp. 12–13). The appeal must be taken within ten days after the local board mails its notice of classification (sec. 627.2, *infra*, pp. 36–37). Once the appeal is taken, the regulations impose upon the local board only the responsibility of having the registrant undergo a preinduction physical examination and, if he passes that examination, of forwarding the registrant's file to the appeal board (sec. 627.14, *infra*, pp. 38–39). The regulations make no provision for the reception of new evidence while the appeal is pending, and they specifically provide (sec. 627.24 (b), *infra*, pp. 39–40) that the appeal board shall not receive or consider any information not contained in the record received from the local board, with the exception of the recommendation of the Department of Justice where the registrant claims classification as a conscientious objector and of general information concerning economic, industrial, and social conditions.

Section 626.2 (*infra*, pp. 33–34) in providing for the reopening of a classification refers, we think, to the reopening of a final classification. Until the classification becomes final there is no occasion to reopen it, for it is subject to being

changed on appeal. We think this is implicit in the provision of Section 627.26 (b) (*infra*, p. 40) that the classification of the board of appeal shall be final if no appeal is taken to the President, provided, however, that the local board may thereafter change the classification acting pursuant to the reopening provision of Section 626.2. That the regulations do not contemplate the reopening of a classification which is not final because an appeal is pending is likewise evident from the fact that they make no provision for remanding the case to the local board in a case where, after the appeal is taken, the registrant seeks to have the local board reopen the classification, or for delaying consideration of the appeal pending the determination of the local board as to whether it will reopen the classification.

Our construction of the regulations is supported, as well, by the administrative interpretation of them. We have set forth in Appendix B, *infra*, pp. 42–45, copies of letters and a memorandum of the Selective Service System addressed to the question whether new evidence may be supplied while an appeal is pending, which have been obtained from the files of the Selective Service System. These documents, which, the Selective Service System informs us, are representative of the construction placed upon the regulations by the persons responsible for administering them, take the position, which we urge, that while an

appeal is pending new evidence may not be presented for consideration on the appeal. Rather, the registrant must wait until the appeal is decided and his classification becomes final and then apply to the local board to reopen the classification on the basis of the proffered new evidence.

To accept petitioner's view that, while his appeal was pending and his classification was not yet final, he was entitled to have the local board entertain an application to reopen the classification is to render meaningless the provision of Section 625.1 (*infra*, pp. 30–32), permitting the registrant only one appearance before the local board for the purpose of adducing additional evidence. Moreover, to construe the regulations as petitioner urges is to permit him to present his case piecemeal instead of holding him responsible for performing his part in the selective service procedure by gathering the evidence pertaining to himself and furnishing it to the local board as a basis for its decision in classifying him. Furthermore, to permit the reopening of the classification while the classification is pending on appeal makes possible long delays in the decision of the appeal by successive applications for the reopening of the local board classification. Instead of administrative action in the shortest practicable time as Congress contemplated, the classification procedure would become enmeshed in procedural maneuvers calculated to delay the day of induc-

tion. Cf. *United States ex rel. La Charity* v. *Commanding Officer*, 142 F. 2d 381, 382 (C. C. A. 2); *United States ex rel. Filomio* v. *Powell*, 38 F. Supp. 183, 187–191 (D. N. J.).

If Section 626.2 is to be construed as complementing the other provisions of the regulations relating to the classification of registrants, we think it must be recognized as a remedial device for dealing with those cases where there has been a final classification and thereafter new evidence is discovered or circumstances bearing on the classification materially change. This is not such a case. Petitioner, in our view, was not entitled to have his classification reopened while his appeal was pending. We think this was true whether the appeal was pending for a few weeks, as is the usual case, or whether it was pending for more than a year, as in this case. After the appeal had been decided, petitioner was free to present new evidence to the local board by then requesting the local board to reopen his final classification. Accordingly, we submit that the local board properly declined to entertain petitioner's request to reopen the classification or to forward the materials, presented to it for the first time while the appeal was pending, to the appeal board for initial consideration by that board in deciding petitioner's appeal.[14]

[14] We are unable to agree with petitioner's suggestion (Br. 196–197) that the letter of May 23, 1944, and the documents attached to it might be construed as a statement under Sec-

3. *The local board's letter to the appeal board.*— On July 28, 1944, when the local board forwarded petitioner's selective service cover sheet to the appeal board, the local board's clerk prepared a letter to the appeal board giving the reasons for the local board's classification (Def. Ex. M, R. 223) as follows:

> The above named registrant was classified in Class 1-A by this Board for the following reasons:
>
> Mr. Estep is not listed as a minister in any list yet submitted from National Headquarters of Selective Service.
>
> Although this registrant is not gainfully employed and devotes his time to the min-

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tion 627.12 of the Selective Service Regulations. That Section provides that "The person appealing may attach to his notice of appeal or to the Selective Service Questionnaire (Form 40) a statement specifying the respects in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file." We think petitioner's letter of October 27, 1942 (Def. Ex. H, R. 213), giving notice of appeal and specifying that information before the local board which petitioner believed supported his claim, is such a statement. But we perceive no basis for so treating the letter of May 23, 1944, and the attached affidavits. Assuming that a statement under Section 627.12 may be filed long after the appeal is taken, the material which petitioner offered was new evidence; it was not, as is required by Section 627.12, an attachment to the notice of appeal or questionnaire which performs the function which the assignment of errors performs in an appellate court.

> istry, he does not contribute enough hours to this work to be considered a full-time minister since he works only three days a week in that capacity, and is not justified to a 4–D classification.
>
> This registrant is 21 years of age having been born August 9, 1922, and is also single.

While the Selective Service Regulations do not deal specifically with this situation, we think that the selective service policy is reflected by Section 627.13 (b) (*infra*, pp. 37–38) which provides that where it is necessary for the local board to prepare a written summary of oral evidence which it considered, the board "should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision." Accordingly, we agree with petitioner and the dissenting judges (R. 298–299) that it was irregular for the local board to send the letter to the appeal board. But we are unable to agree that this departure assumes the proportions of a denial of due process.

The letter was a summary of what the local board regarded as the pertinent facts in the file. Every factual conclusion which the letter contains is reflected by evidence which was properly before the board of appeal. Thus, while as a matter of policy the letter should not have been written, it conveyed no information to the board of appeal which it would not otherwise have gained by an examination of the evidence before it. Apart

from the fact that the letter was, therefore, an innocuous one, it may be noted that Section 627.24 (b) (*infra*, pp. 39–40) requires that an appeal board in reviewing an appeal shall not consider any information which is not contained in the record received from the local board. Since it must be presumed that the appeal board acted in compliance with this regulation (*Lewis* v. *United States*, 279 U. S. 63, 73; *Koch* v. *United States*, 150 F. 2d 762 (C. C. A. 4), the irregularity assumes insignificant proportions.

If the letter be viewed in the light most favorable to petitioner, it was, at best, incompetent evidence which was received and may have been considered by the appeal board. But a want of due process is not established by merely showing this. *Vajtauer* v. *Commissioner of Immigration*, 273 U. S. 103, 106; *Bilokumsky* v. *Tod*, 263 U. S. 149, 157; cf. *Bridges* v. *Wixon*, No. 788 last Term, decided June 18, 1945. We submit that the letter, though irregular, was not such a departure as to have deprived petitioner of his right to have his case fairly considered by the appeal board. Cf. *Cramer* v. *France*, 148 F. 2d 801, 804 (C. C. A. 9).[15]

[15] Petitioner can derive no comfort from the letters to the local board from state Selective Service Headquarters (Def. Exs. O and P, R. 226–228) censuring the local board for the irregularities in the disposition of petitioner's case. Since State Headquarters twice reviewed petitioner's case and concluded that no action on its part was justified (see Def. Ex. R, R. 233), we think it plain that State Headquarters was disturbed by the delay in handling petitioner's case rather than anything in the case which prejudiced petitioner.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the circuit court of appeals should be affirmed.

J. HOWARD MCGRATH,
Solicitor General.

THERON L. CAUDLE,
Assistant Attorney General.

ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
WALTER J. CUMMINGS, JR.,
Attorneys.

NOVEMBER 1945.

APPENDIX A

The Selective Service Regulations particularly pertaining to the questions of procedural due process discussed *supra*, pp. 20–29, were as follows:

623.1. *General principles of classification.*—(a) Each registrant shall be classified as soon as practicable after his Selective Service Questionnaire (Form 40) is received by the local board. * * *

623.2. *Information considered for classification.*—The registrant's classification shall be made solely on the basis of the Selective Service questionnaire (Form 40), Affidavit of Dependent Over 18 Years of Age (Form 40A), Claim for Deferred Classification by Person Other Than Registrant (Form 42), or Affidavit to Support Claim for Occupational Deferment (Form 42A), and such other written information as may be contained in his file. Oral information should not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances should the local board rely upon information received by a member personally unless such information is reduced to writing and placed in the registrant's file.

* * * * *

625.1. *Opportunity to appear in person.*—(a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance before the local board under the provisions of this part), shall have an opportunity to appear

in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (Form 57) to him. Such 10-day period may not be extended, except when the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control.

(b) No person other than the registrant may request an opportunity to appear in person before the local board.

(c) If the written request of the registrant to appear in person is filed with the local board within the 10-day period or if it is filed after such 10-day period and the local board finds that the registrant was unable to file such request within such period because of circumstances over which he had no control, the local board shall enter upon the Classification Record (Form 100) the date on which the request was received and the date and time fixed for the registrant to appear and shall promptly mail to the registrant a notice of the time and place fixed for such appearance.

(d) If such a written request of a registrant for an opportunity to appear in person is received after the 10-day period following the mailing of a Notice of Classification (Form 57) to the registrant, the local board, unless it specifically finds that the registrant was unable to file such a request within such period because of circumstances over which he had no control, should advise the registrant, by letter, that the time in which he is permitted to file such a request has expired, and a copy of

such letter should be placed in the registrant's file. Under such circumstances, no other record of the disposition of the registrant's request need be made.

625.2. *Appearance before local board.*— (a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. The fact that he does appear shall be entered in the proper place on the Classification Record (Form 100). If the registrant does not speak English adequately, he may appear with a person to act as interpreter for him. No registrant may be represented before the local board by an attorney.

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary.

(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local

board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified, provided that if he has been physically examined by the examining physician, the Report of Physical Examination and Induction (Form 221) already in his file shall be used in case his physical or mental condition must be determined in order to complete his classification.

(d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, shall mail notice thereof on the Notice of Classification (Form 57) to the registrant and on Classification Advice (Form 59) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 623.61.

(e) Each such classification shall be followed by the same right of appeal as in the case of an original classification.

625.3. *Induction postponed.*—A registrant shall not be inducted during the period afforded him to appear in person before a member or members of his local board, and if the registrant requests a personal appearance, he shall not be inducted ~~until 10~~ days after the Notice of Classification (Form 57) is mailed to him by the local board, as provided in paragraph (d) of section 625.2.

* * * * *

626.2. *When registrant's classification may be reopened and considered anew.*—(a) The local board may reopen and consider anew the classification of a registrant (1) upon

the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any interested party in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (Form 150) unless the local board first specifically finds that there has been a change in the registrant's status resulting from circumstances over which the registrant has no control.

(b) At any time before the induction of a registrant, the local board shall reopen and consider anew such registrant's classification upon the written request of the State Director of Selective Service or the Director of Selective Service.

626.3. *Refusal to reopen and consider anew registrant's classification.*—When a registrant, any person who claims to be a dependent of a registrant, any interested party in a case involving occupational deferment, or the government appeal agent files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered

when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board, by letter, should advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and should place a copy of the letter in the registrant's file. No other record of the receipt of such a request and the action taken thereon is required.

626.11. *When classification reopens, it shall be considered anew.*—When the local board reopens the registrant's classification, it shall consider the new information which it has received and shall again classify the registrant in the same manner as if he had never before been classified. Such classification shall be and have the effect of a new and original classification even though the registrant is again placed in the class that he was in before his classification was reopened.

626.12. *Notice of action when classification considered anew.*—When the local board reopens the registrant's classification, it, as soon as practicable after it again classifies the registrant, shall mail notice thereof on the Notice of Classification (Form 57) to the registrant and on Classification Advice (Form 59) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 623.61.

626.13. *Right of appeal following reopening of classification.*—Each such classification shall be followed by the same right of

appearance before the local board and the same right of appeal as in the case of an original classification.

626.14. *Form 150 and Form 50 to be canceled when classification reopened.*—When the local board has reopened the classification of a registrant, it shall cancel any Order to Report for Induction (Form 150) or Order to Report for Work of National Importance (Form 50) which may have been issued to the registrant. If after the registrant's classification is reopened he is classified anew into a class available for service, he shall be ordered to report for induction or for work of national importance under civilian direction, as the case may be, in the usual manner.

* * * * * *

627.2. *Appeal by registrant and others.*—(a) The registrant, any person who claims to be a dependent of a registrant; any person who has filed written evidence of the occupational status of a registrant, or the government appeal agent may appeal to a board of appeal from any classification of a registrant by the local board except that no such person may appeal from the determination of the registrant's physical or mental condition by the examining physician, the examining station of the armed forces, or the local board.

* * * * * *

(c) The registrant, any person who claims to be a dependent of the registrant, or any person who has filed written evidence of the occupational status of the registrant may take an appeal authorized under paragraph (a) above at any time within the following periods:

(1) Within 10 days after the date the local board mails to the registrant a Notice of Classification (Form 57); * * *

* * * * * *

627.11. *How appeal to board of appeal is taken.*—(a) Any person entitled to do so may appeal in either of the following ways:

(1) By filing with the local board a written notice of appeal. Such notice need not be in any particular form but must state the name of the registrant and the name and identity of the person appealing so as to show the right of appeal.

(2) By signing the "Appeal to Board of Appeal" on the Selective Service Questionnaire (Form 40).

(b) The local board shall enter on the Classification Record (Form 100) the date on which an appeal is filed.

627.12. *Statement of person appealing.*—The person appealing may attach to his notice of appeal or to the Selective Service Questionnaire (Form 40) a statement specifying the respects in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to consider or give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.

627.13. *Local board to prepare and forward file and DSS Form 66.* * * *

(b) * * * the local board shall attach the Individual Appeal Record (Form 66) to the inside of the registrant's Cover Sheet (Form 53) and shall carefully check the registrant's file to make certain that all steps required by the regulations have been

taken and that the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts. In preparing such a summary, the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision.

* * * * *

627.14. *Time when record to be forwarded on appeal.*—(a) When an appeal is taken from the classification of a registrant in Class I–A, Class I–A–O, or Class IV–E (except a registrant who, because of being in excess of 38 years of age, is identified with the letter "H" as provided in section 622.81), the file of the registrant shall be held by the local board and shall not be forwarded to the board of appeal or the State Director of Selective Service, as the case may be, until (1) the registrant has been ordered to report for his preinduction physical examination in the usual manner when his order number is reached and (2) the results of the preinduction physical examination have been received by the local board or the registrant has failed to appear for his preinduction physical examination at the time he is ordered to do so. If as a result of the preinduction physical examination such registrant is found to be disqualified for service, his classification shall be reopened and he shall be classified in Class IV–F. In such cases the appeal will not be forwarded.

(b) The registrant's file shall be forwarded to the board of appeal or the State

Director of Selective Service, as the case may be, immediately after the local board has complied with the provisions of section 627.13 when (1) an appeal is taken from the classification of a registrant in a class other than Class I–A, Class I–A–O, or Class IV–E, or (2) the classification of a registrant in Class II–A or Class II–B is submitted for review and decision to a board of appeal under section 627.3, or (3) an appeal is taken from the classification of a registrant in Class I–A, Class I–A–O, or Class IV–E, and such registrant, because of being in excess of 38 years of age, is identified with the letter "H" as provided in section 622.81.

* * * * *

627.23. *Preliminary review.*—The board of appeal will carefully check each file to determine whether all steps required by the regulations have been taken, whether the record is complete, and whether the information in the file is sufficient to enable it to determine the registrant's classification. If any steps have been omitted by the local board, if the record is incomplete, or if the information is not sufficient to enable the board of appeal to determine the classification of the registrant, the board of appeal shall return the file to the local board with proper instructions. If the board of appeal returns the file to the local board, it shall enter the date of the return in column 4 of the Docket Book of Board of Appeal (Form 102).

627.24. *Review by board of appeal.* * * *

(b) In reviewing the appeal, the appeal board shall not receive or consider any information which is not contained in the record received from the local board except

(1) the advisory recommendation from the Department of Justice under section 627.25, and (2) general information concerning economic, industrial, and social conditions.

* * * * *

627.26 *Decision of board of appeal.*—(a) The board of appeal shall classify the registrant, giving consideration to each class in the order in which the local board gives consideration thereto when it classifies a registrant; provided that the board of appeal shall not give consideration to Class IV–F because of physical or mental disability.

(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, however, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 626.

* * * * *

APPENDIX B

Administrative interpretations of the Selective Service Regulations on the question whether new evidence may be presented while an appeal is pending.

1. JANUARY 11, 1941.

STATE DIRECTOR OF SELECTIVE SERVICE
300 Logan Street, Denver, Colorado.

Attention: Major deR. Mowry.

MY DEAR GENERAL RICHARDSON: This is to acknowledge receipt of your letter of recent date propounding the following questions:

* * * * *

(3) In case of an appeal, may the Appeal Agent insert into the record material which is, in his estimation, pertinent to the case, even though the Local Board does not consider such material pertinent?

* * * * *

As to the third question, the Government Appeal Agent or other person appealing the case should have the right to insist upon any pertinent record evidence going up to the Board of Appeal, as a part of the record, provided of course such evidence was in the registrant's file at the time the Local Board made the classification. (See Paragraph 372c.) The disposition of the Local Board should not be to keep from the Board of Appeal any pertinent record information which was in the registrant's file

at the time the Local Board made the classification.

Sincerely yours,

LEWIS B. HERSHEY,
Deputy Director.

AJLewis/mo

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2. JUNE 27, 1941.

STATE DIRECTOR OF SELECTIVE SERVICE,
Armory Drive, Trenton, New Jersey.

Attention: Lt. Col. E. N. Bloomer.

DEAR SIR: We are in receipt of your letter of June 24, 1941, regarding Registrant Hugh Herbert Fiske, of Local Board No. 22, Jersey City, N. J.

You refer in your letter to certain affidavits which have been submitted by the registrant, indicating that there is information to the effect that these affidavits would bear investigation. National Headquarters is in complete accord with your recommendation in this matter. It is our opinion, however, that the file of the registrant in its present form, which has now been passed on by the local board and the board of appeal, should be passed on in the appeal to the President without the addition of any new evidence.

New evidence which you may secure should be submitted to the local board for their consideration after the appeal to the President has been decided. The local board should, at the time such evidence is submitted, reconsider the case in the light of the new evidence. Authority is granted to reclassify the registrant upon the basis of new evidence.

In the event such new evidence is submitted to the local board and the registrant

is reclassified, it is requested that this headquarters be advised as to this classification, and the reason thereor.

For the Deputy Director,

CARLTON S. DARGUSCH,
Lt. Col., JAGD, Executive.

RPDavidson: EH.

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3. MAY 7, 1941.

Major James N. Keelin, Jr., Planning Council.
Major Shattuck.
Appeal No. 26—Palmer Winthrop Cheney.

You inquire whether or not evidence presented to the local board on April 15, 1941 may be considered upon this appeal to the President. The decision of the local board classifying the registrant in Class I–A was made on March 10, 1941. Upon appeal to the board of appeal, this classification was affirmed on March 14, 1941. It is from these decisions that an appeal is now taken to the President. The new evidence in question was not called to the attention of the local board until after both the local board and the board of appeal had rendered their respective decisions. There are no provisions in the regulations for presentation of new evidence to either the board of appeal or to the President. All new evidence must be presented to the local board and the local board shall determine from such new evidence whether or not it should reclassify the registrant. It is therefore clear that the evidence added to the record subsequent to the decision of the local board and never given consideration by the local board as a basis for classification may not properly be considered in the decision

either to the board of appeal or the President.

Under such circumstances the proper procedure is to return the records to the local board with instructions to the local board to consider the new evidence and to determine whether or not in the light of such new evidence the registrant should be reclassified. Under our present procedure, if the local board determines not to reclassify the registrant and continues his classification, the registrant has no right of appeal. The attitude of the local board in this particular case indicates that the local board would not change its classification even though these new facts were before it, although it is clear that such facts warrant the registrant being reclassified in Class III.

There is an additional difficulty in that the appeal from the original decision of the local board and the board of appeal is properly before the President. He would, therefore, in any event be required to determine the appeal on the facts properly before him. From a careful review of the file, it would seem to me that, without regard to the additional new evidence introduced, the President would classify the registrant in Class III anyway. If this decision is reached, it would be possible to state that, while these new facts are in the file, independent of them and without considering them, the President had determined to place the registrant Class III.

* * * * * *

EDWARD S. SHATTUCK.

ESS/mm.
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SUPREME COURT OF THE UNITED STATES.

Nos. 292 and 66.—October Term, 1945.

William Murray Estep, Petitioner, 292 *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.
Louis Dabney Smith, Petitioner, 66 *vs.* The United States of America.	Court of Appeals for the Fourth Circuit. On Writ of Certiorari to the United States Circuit

[February 4, 1946.]

Mr. Justice Douglas delivered the opinion of the Court.

In *Falbo* v. *United States*, 320 U. S. 549, we held that in a criminal prosecution under § 11 of the Selective Training and Service Act of 1940 (54 Stat. 894, 50 U. S. C. App. § 311) a registrant could not defend on the ground that he was wrongfully classified and was entitled to a statutory exemption, where the offense was a failure to report for induction into the armed forces or for work of national importance.[1] We found no provision for judicial review of a registrant's classification prior to the time when he had taken all the steps in the selective process and had been finally accepted by the armed services. The question in these cases is whether there may be judicial review of his classification in a prosecution under § 11 where he reported for induction, was finally accepted, but refused to submit to induction.

Estep's local board classified him as I-A, i. e., as available for military service.[2] Sec. 5(d) of the Act exempts from training and service (but not from registration) "regular or duly ordained ministers of religion." Under the regulations those in that category are classified as IV-D.[3] Estep, a member of Jehovah's Witnesses, claimed that he was entitled to that classification. The local board

1 Sec. 5(g) of the Act provides that a registrant shall "be assigned to work of national importance under civilian direction" if he is conscientiously opposed to induction into the armed services even for noncombatant service. See Selective Service Regulations, 652.1-652.14, 653.1-653.16.

2 Selective Service Regulations, 622.11.

3 *Id.*, 622.44.

ruled against him. He took his case to the appeal board which classified him as I-A.[3] He then asked the State and National Directors of Selective Service to appeal to the President for him.[5] His request was refused. The local board thereupon ordered him to report for induction. He reported at the time and place indicated. He was accepted by the Navy. But he refused to be inducted, claiming that he was exempt from service because he was an ordained minister of the gospel.

He was indicted under § 11 of the Act for wilfully failing and refusing to submit to induction.[6] He sought to defend on the ground that as a Jehovah's Witness he was a minister of religion and that he had been improperly denied exemption from service, because the classifying agencies acted arbitrarily and capriciously in refusing to classify him as IV-D. He also claimed that his right to an effective appeal had been denied because the local board unlawfully withheld certain relevant documents from the appeal board and included improper material in the record on appeal. The District Court rejected these defenses and did not permit the introduction of evidence to sustain Estep's contention. The jury found him guilty and he was sentenced to imprisonment for a term of five years. On appeal the Circuit Court of Appeals affrmed, on a divided vote. 150 F. 2d 768.

Smith, like Estep, is a member of Jehovah's Witnesses. He claimed exemption from all service on the ground that he was a minister of religion. His local board placed him in Class I-A, as available for military service. His classification was affirmed by the appeal board. On appeal to the President his classification was

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[4] By § 10(a)(2) of the Act the President was authorized to establish "civilian local boards and such other civilian agencies, including appeal boards and agencies of appeal, as may be necessary to carry out the provisions of this Act." The provisions governing appeals to the boards of appeal are contained in 627.1-627.61 of the Regulations. The Act provides a special appeal procedure for conscientious objectors. See § 5(g).

[5] Either of them may take such an appeal at any time when he "deems it to be in the national interest or necessary to avoid an injustice." Selective Service Regulations, 628.1. A registrant may appeal to the President when he is classified as I-A provided one or more of the board of appeal dissented from such classification. *Id.*, 628.2. In Estep's case the board of appeal was unanimous in classifying him in I-A.

[6] Sec. 11 so far as material here provides "any person . . . . who shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act . . . shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . . ."

again affirmed. The local board then ordered him to report for induction. He reported to the induction station, was accepted by the military, but refused to be inducted, claiming he was exempt from service because he was a minister. He was inducted against his will and later was held for trial by a general court-martial for disobedience of military orders. He filed a petition for a writ of *habeas corpus* which was denied. *Smith* v. *Richart*, 53 F. Supp. 582. While his appeal was pending, we decided *Billings* v. *Truesdell*, 321 U. S. 542. He was thereupon released from military custody and indicted for violation of § 11 of the Act. At the trial he sought to attack the classification given him by his local board, claiming, among other things, that it acted without any foundation of fact, discriminated against him because he was a Jehovah's Witness, and denied him the right to make full proof of his claim that he was a minister of religion. The court ruled that no such defense could be tendered. Smith was found guilty by the jury and a sentence of three and one-half years was imposed. The judgment of conviction was affirmed on appeal. 148 F. 2d 288.

The cases are here on petitions for writs of certiorari which we granted because of the importance of the question presented.

Congress entrusted the administration of the Selective Service System to civilian agencies, not to the military. It authorized the President to create and establish a Selective Service System and to establish civilian local boards and appeal boards to administer it. § 10(a)(2). The Selective Service System was designed to "provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service." *Id.* Congress specified certain restricted classes for deferment[7] or exemption from service, including in the latter, as we have said, "regular or duly ordained ministers of religion." § 5. The President was authorized to provide for the deferment of other classes by rules and regulations.[8] § 5(e). And the local boards "under rules and regulations prescribed by the President" were granted the "power within their respective jurisdictions to hear

[7] Thus by § 5(e)(1) specified classes of public officials were deferred from training and service while holding their offices.

[8] The regulations placed in deferred classifications those whose employment in industry, agriculture, or other occupations or whose activity was found to be necessary to the maintenance of the national health, safety, or interest; those who had persons dependent on them for support; those found to be physically, mentally, or morally deficient or defective. See Selective Service Regulations 622.21, 622.25-1, 622.32, 622.61, 622.62.

and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards." § 10(a)(2). The Act makes no provision in terms for judicial review of the actions of the local boards or the appeal boards. For § 10(a)(2) states that the "decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe."[9]

By the terms of the Act Congress enlisted the aid of the federal courts only for enforcement purposes. Sec. 11 makes criminal a wilful failure to perform any duty required of a registrant by the Act or the rules or regulations made under it. An order to report for induction is such a duty; and it includes the duty to submit to induction. *Billings* v. *Truesdell*, *supra*, p. 557. Sec. 11 confers jurisdiction on the district courts to try one charged with such offense. But § 11 is silent when it comes to the defenses, if any, which may be interposed.

Thus we start with a statute which makes no provision for judicial review of the actions of the local boards or the appeal agencies. That alone, of course, is not decisive. For the silence of Congress as to judicial review is not necessarily to be construed as a denial of the power of the federal courts to grant relief in the exercise of the general jurisdiction which Congress has conferred upon them. *School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94; *Gegiow* v. *Uhl*, 239 U. S. 3; *Stark* v. *Wickard*, 321 U. S. 288. Judicial review may indeed be required by the Constitution. *Ng Fung Ho* v. *White*, 259 U. S. 276. Apart from constitutional requirements, the question whether judicial review will be provided where Congress is silent depends on the whole setting of the particular statute and the scheme of regulation which is adopted. *Switchmen's Union* v. *Mediation Board*, 320 U. S. 297, 301. And except when the Constitution requires it, judicial review of administrative action may be granted or withheld as Congress choses.

[9] The part of § 10(a)(2) relevant here provides: "Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe."

The authority of the local boards whose orders are the basis of these criminal prosecutions is circumscribed both by the Act and by the regulations. Their authority to hear and determine all questions of deferment or exemption is, as stated in § 10(a)(2), limited to action "within their respective jurisdictions." It is only orders "within their respective jurisdictions" that are made final. It would seem, therefore, that if a Pennsylvania board ordered a citizen and resident of Oregon to report for induction, the defense that it acted beyond its jurisdiction could be interposed in a prosecution under § 11. That case would be comparable to *Tang* v. *United States*, 142 F. 2d 919, where the local board ordered a registrant to report for induction without allowing him the appeal to which he was entitled under the regulations. Since § 10(a)(2) makes the decisions of the local boards final "except where an appeal is authorized" under the regulations, the defense was allowed in the criminal trial.

Any other case where a local board acts so contrary to its granted authority as to exceed its jurisdiction[10] does not stand on a different footing. By § 10(a)(2) the local boards in hearing and determining claims for deferment or exemption must act "under rules and regulations prescribed by the President." Those rules limit, as well as define, their jurisdiction. One of those regulations forbids the local boards from basing their classification of a registrant on a discrimination "for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization." 623.1. Another provides, in accordance with the mandate contained in § 5(g)(1) of the Act, for the deferment of governors of States and members of Congress while they hold their offices.[11] 622.42. Another provides that the local board "shall reopen and consider anew the classification of a registrant" on the written request of the State Director or the Director and upon receipt of the request "shall immediately cancel" any order to report for induction or for work of national importance. 626.2-4. If a local board ordered a member of Congress to report for induction, or if it classified a registrant as available for military service, because he was a Jew, or a German, or a Negro, it would act in defiance of the law. If a local board refused to reopen on the written re-

[10] See cases cited in note 14, *infra*.

[11] 622.42 provides, "In Class IV-B *shall be placed* any registrant" who holds specified offices. (Italics added.)

quest of the State Director a registrant's classification and refused to cancel its order to report for induction, it would be acting in the teeth of the regulations. In all such cases its action would be lawless and beyond its jurisdiction.

We cannot read § 11 as requiring the courts to inflict punishment on registrants for violating whatever orders the local boards might issue. We cannot believe that Congress intended that criminal sanctions were to be applied to orders issued by local boards no matter how flagrantly they violated the rules and regulations which define their jurisdiction. We are dealing here with a question of personal liberty. A registrant who violates the Act commits a felony.[12] A felon customarily suffers the loss of substantial rights.[13] Sec. 11, being silent on the matter, leaves the question of available defenses in doubt. But we are loathe to resolve those doubts against the accused. We cannot readily infer that Congress departed so far from the traditional concepts of a fair trial when it made the actions of the local boards "final" as to provide that a citizen of this country should go to jail for not obeying an unlawful order of an administrative agency. We are loathe to believe that Congress reduced criminal trials under the Act to proceedings so barren of the customary safeguards which the law has designed for the protection of the accused. The provision making the decisions of the local boards "final" means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which

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[12] "All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies." Criminal Code § 335, 18 U. S. C. § 541.

[13] *California*: § 2600 of the Penal Code provides that a sentence of imprisonment for less than life suspends all civil rights and forfeits all public offices and private trusts, authority, or power during the imprisonment.

New York: For a similar provision see § 510 of the Penal Code LAW.

Missouri: § 4561 Rev. Stat. Ann. renders any person sentenced to a penitentiary or convicted of a felony for any crime incompetent to serve as a juror, and forever disqualfies him from voting or holding office, unless pardoned.

it gave the registrant.[14] See *Goff* v. *United States*, 135 F. 2d 610, 612.

Falbo v. *United States*, *supra*, does not preclude such a defense in the present cases. In the *Falbo* case the defendant challenged the order of his local board before he had exhausted his administrative remedies. Here these registrants had pursued their administrative remedies to the end. All had been done which could be done. Submission to induction would be satisfaction of the orders of the local boards, not a further step to obtain relief from them.[15]

If § 11 were not construed to permit the accused to defend on the ground that his local board acted beyond its jurisdiction, a curious result would follow. The remedy of *habeas corpus* extends to a case where a person "is in custody in violation of the Constitution or of a law . . . of the United States." R. S. § 753, 28 U. S. C. § 453. It has been assumed that *habeas corpus* is available only after a registrant has been inducted into the armed services.[16] But if we now hold that a registrant could not defend at his trial on the ground that the local board had no jurisdiction in the premises, it would seem that the way would then be open to him to challenge the jurisdiction of the local board after conviction by

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[14] That is the scope of judicial inquiry in deportation cases where Congress has made the orders of deportation "final". Chin Yow v. United States, 208 U. S. 8; Ng Fung Ho v. White, *supra*; Mahler v. Eby, 264 U. S. 32; Vajtauer v. Commissioner, 273 U. S. 103; Bridges v. Wixon, 326 U. S. 135. That is also the scope of judicial inquiry when a registrant after induction seeks release from the military by *habeas corpus*. See United States v. Cain, 144 F. 2d 944.

[15] It is said that our conclusion runs counter to an unbroken line of cases holding that a registrant may not challenge his classification in a prosecution under § 11. But most of those cases on their facts involved only the issue presented by the *Falbo* case. In only a few of them was the issue presented here necessary for decision. The question was reserved in United States v. Pitt, 144 F. 2d 169, 173 (C. C. A. 3d, 1944). In the following cases, the question was necessary for decision; and it was held that the defense was not available; Fletcher v. United States, 129 F. 2d 262 (C. C. A. 5th, 1942); United States v. Rinko, 147 F. 2d 1 (C. C. A. 7th, 1945); Gibson v. United States, 149 F. 2d 751 (C. C. A. 8th, 1945); Koch v. United States, 150 F. 2d 762 (C. C. A. 4th, 1945).

[16] See United States v. Grieme, 128 F. 2d 811; United States v. Kauten, 133 F. 2d 703; United States v. Mroz, 136 F. 2d 221; Biron v. Collins, 145 F. 2d 758; Fujii v. United States, 148 F. 2d 298; Gibson v. United States, 149 F. 2d 751. See Connor and Clarke, Judicial Investigation of Selective Service Action, 19 Tulane L. Rev. 344; Elliff, Jehovah's Witnesses and the Selective Service Act, 31 Va. L. Rev. 811.

habeas corpus.[17] The court would then be sending men to jail today when it was apparent that they would have to be released tomorrow.

We do not suggest that because Congress has provided one judicial remedy another should be implied. We may assume that where only one judicial remedy is provided, it normally would be deemed exclusive. But the fact that *habeas corpus* after conviction is available in these cases gives added support to our reading of § 11. It supports a rejection of a construction of the Act that requires the courts to march up the hill when it is apparent from the beginning that they will have to march down again.

We express no opinion on the merits of the defenses which were tendered. Since the petitioners were denied the opportunity to show that their local boards exceeded their jurisdiction, a new trial must be had in each case.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

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[17] The courts which have said that *habeas corpus* was available only after induction (see note 16, *supra*) appear to have been influenced by the decisions arising under the 1917 Act, 40 Stat. 76, 50 U. S. C. App. § 201. Thus in United States *v.* Grieme, *supra*, note 16, p. 814, the court in ruling that the findings of the local boards were not reviewable by the courts said, "Here again the rule is similar to the construction placed upon the Selective Draft Act of 1917. See *Ex parte Hutfils*, 245 F. 798, 799." The latter case involved a petition for a writ of *habeas corpus* after induction, which was the accepted way of challenging the jurisdiction of the draft boards under the 1917 Act. But as we pointed out in Billings *v.* Truesdell, *supra*, p. 546, a registrant under the 1917 Act was subject to military law from the time he was ordered to present himself for induction. Defiance of the order was held to constitute desertion even though the draftee had not been afforded a fair hearing by the board. Ex parte Romano, 251 F. 762; Ex parte Tinkoff, 254 F. 912. It was said in Ex parte Romano, *supra*, p. 764: "Although based on irregular proceedings, it was not void. Until vacated, it was binding on the petitioner."

But as Billings *v.* Truesdell, *supra*, makes plain, the present Act and the regulations promulgated under it are different. A registrant is not subject to military law from the time he is ordered to report for induction, but only after he has submitted to induction. Thus the decisions under the 1917 Act, holding that his remedy against unlawful action of the local board is by way of *habeas corpus* after induction, are no guide to decision under the present Act.

It is true that after the conviction of the defendant in the *Falbo* case, his petition for a writ of *habeas corpus* was denied. 141 F. 2d 689. And in a like situation *habeas corpus* was denied in advance of the trial. Albert *v.* Goguen, 141 F. 2d 302. But in those cases additional steps in the selective service procedure remained to be taken. Denial of *habeas corpus* followed by analogy to the familiar situations where other corrective procedures had been available which might have afforded relief from the orders complained of. See Bowen *v.* Johnston, 306 U. S. 19; Ex parte Williams, 317 U. S. 604; Ex parte Hawk, 321 U. S. 114. But in the present cases the registrants, as we have said, had pursued their administrative remedies to the end.

Mr. Justice FRANKFURTER, concurring in result.

Although Congress, in 1940, and by reenactment since, provided that when a draft board determines whether a registrant is entitled to exemption or deferment the board's decision is "final," the Court now concludes that such a decision is not final but may be reviewed when the registrant is tried before a jury for wilful disobedience of a board's order. Not only is such a result opposed to the expressed will of Congress. It runs counter to the achievement of the great object avowed by Congress in enacting this legislation; it contradicts the settled practice under the Selective Service Act throughout the war years, recognized as such by authoritative Congressional opinion; it reverses all the circuit courts of appeals before whom the matter has come, constituting an impressive body of decisions and expressing the views of more than forty judges.

The case is this. Estep was a Jehovah's Witness. By virtue of that fact he claimed the protection of § 5(d) of the Selective Training and Service Act of 1940 (54 Stat. 885, 888; 50 U. S. C. App. § 305(d)), which exempts from service "Regular or duly ordained ministers of religion . . . . . " His local board ruled against this claim and classified Estep as I-A, that is, available for military service; and ordered him to report for induction. He reported and was accepted by the Navy but refused to submit to induction. See *Billings* v. *Truesdell*, 321 U. S. 542. This prosecution was then commenced under § 11 of the Act (54 Stat. 885, 894; 50 U. S. C. App. § 311). That section makes it an offense for any person wilfully to disobey "any of the provisions of this Act, or the rules or regulations made or directions given thereunder . . . ." Concededly Estep failed to carry out the order of the board to submit to induction. Estep sought to defend disobedience on the ground that the local board had improperly denied his claim of exemption from service in that they refused to classify him as a "regular or duly ordained minister of religion." He also offered in defense proof of alleged misconduct by the board bearing on his right of appeal from the board's decision. Disallowance of these defenses by the district court, which after conviction were sustained by the Circuit Court of Appeals presents two issues for our consideration: I. Is the decision of a local board denying a claim of exemption subject to reconsideration in a criminal prosecution for knowingly failing to perform that duty required by the Act as a result of such classification? II. Is

action by the local board whereby a registrant is cut off from the opportunities of a review within the Selective Service process as authorized by the Act available as a defense in such prosecution for disobedience of the local board's order? These are questions of such moment in the enforcement of the Selective Service Act as to call for an adequate statement of the reasons that impel disagreement with the major conclusion of the Court.

I.

Did Congress place within the Selective Service System the authority for determining who shall and who shall not serve in the armed services, who shall and who shall not enjoy the exemptions and deferments by which Congress has qualified the duty of all to serve? Or, did it leave such determination for reconsideration in trials before juries of persons charged with wilful disobedience of duties defined by the Act? This is the crucial question in the case and touches the very nerve-center of the Selective Service Act.

One would suppose the Congress expressed its will with great clarity, precluding the need of labored argumentation as to its purpose. Section 10(a)(2) gives the answer:

> "Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local board. The decisions of such local boards shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe." 54 Stat. 885, 893; 50 U. S. C. App. § 310(a)(2).

These words can only mean what they appear to mean if they are read as ordinary words should be read. Ordinary words should be read with their common, everyday meaning when they serve as directions for ordinary people. If legislation was ever designed to define the rights and duties of the vast body of ordinary people, it is the Selective Service Act. One need not italicize "final" to make final mean final, when nowhere in the Act is there any derogation of this Congressional command of finality to "the decisions of such local boards," subject only to reviewability within the Selective Service System.

But if one goes beyond the meaning that the text spontaneously yields, all other relevant considerations only confirm what the

text expresses. To allow judicial review of a board's decision on classification is not to respect the context of purpose into which a specific provision of a law is properly placed. To do so disregards that purpose. And Congress did not rely on the public understanding of the purpose that moved it in passing the Selective Service Act, as well it might have considering that the Act was passed in September, 1940. It was explicit: "The Congress hereby declares that it is imperative to increase and train the personnel of the armed forces of the United States." § 1(a). 54 Stat. 885; 50 U. S. C. App. § 301(a).

There cannot have been many instances in our national life when Congress stamped its legislation as "imperative." And history has amply underscored the desperate urgency. Congress deemed it imperative to secure a vast citizen army with the utmost expedition. It did so with due regard for the individual interests by giving ample opportunities, within the elaborate system which it established, for supervision of the decisions of the multitudinous draft boards on the selection of individuals for service. As to such legislation, even where the language is not explicit, every provision of the Act should be construed to promote fulfilment of the imperative need which inspired it. Surely it would hamper the aim of Congress to subject the decisions of the selective process in determining who is amenable to service to reconsideration by the cumbersome process of trial by jury, admirably suited as that is for the familiar controversies when the nation's life is not at stake. To avoid such a palpable inroad upon Congressional purpose, we need not draw on implications. We must merely resist unwarranted implications to sterilize what Congress has expressly required.

In construing the Act, this Court has heretofore applied the reasons which led Congress to rely wholly on the Selective Service System in determining the rights of individuals. This is what we said two years ago:

> "To meet the need which it felt for mobilizing national manpower in the shortest practicable period, Congress established a machinery which it deemed efficient for inducting great numbers of men into the armed forces. Careful provision was made for fair administration of the Act's policies within the framework of the selective service process."

We so ruled in *Falbo v. United States*, 320 U. S. 549, 554. That was a case in which we held that a challenge to a local board's classification cannot be raised upon a trial like the present for vio-

lation of the Court's order, where the registrant disobeys the order before he is accepted for national service. But the Congress made the decisions of the board "final" without regard to the stage at which the registrant disobeys it. The command of Congress makes the decision of the board no less final after the registrant has submitted to the pre-induction examination than before such submission. The finality of the board is neither diminished, nor the authority of the courts to review such decision enlarged, because a registrant flouts the Selective Service process at an early or at a late stage. The language of the statute is unqualified and all-inclusive: "The decision of such local board shall be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe."

Such has been the construction of more than forty judges in the circuit courts of appeals.[1] The question raised by the facts of this case has come before the Circuit Courts of Appeals for the First, the Second, the Third, the Fourth, the Fifth, the Sixth, the Seventh and the Eighth Circuits. All eight of them have ruled that judicial review of draft board classifications is not available in a criminal prosecution, even though the registrant has submitted to the pre-inductive physical examination. *Sirki* v. *United States*, 145 F. (2d) 749 (C. C. A. 1st, 1944); *United States* v. *Flakowicz*, 146 F. (2d) 874 (C. C. A. 2d, 1945); *United States* v. *Estep*, 150 F. (2d) 768 (C. C. A. 3d, 1945); *Smith* v. *United States*, 148 F. (2d) 288 (C. C. A. 4th, 1945); *Koch* v. *United States*, 150 F. (2d) 762 (C. C. A. 4th, 1945); *Fletcher* v. *United States*, 129 F. (2d) 262 (C. C. A. 5th, 1942); *Klopp* v. *United States*, 148 F. (2d) 659 (C. C. A. 6th, 1945); *United States* v. *Rinko*, 147 F. (2d) 1 (C. C. A. 7th, 1945); *Gibson* v. *United States*, 149 F. (2d) 751 (C. C. A. 8th, 1945).[2] Such was the impact of this Court's

[1] This is a list of the judges:—
First Circuit: Mahoney, Woodbury, Peters.
Second Circuit: Learned Hand, Swan, Augustus N. Hand, Chase, Clark, Frank, Simons, Hutcheson (the last two sitting as designated judges).
Third Circuit: Jones, Maris, Goodrich, McLaughlin, Parker (the last sitting as a designated judge).
Fourth Circuit: Parker, Soper, Dobie, Northcott.
Fifth Circuit: Sibley, Hutcheson, Holmes, McCord, Waller, Lee, Strum.
Sixth Circuit: Hicks, Simons, Hamilton, Martin.
Seventh Circuit: Evans, Sparks, Major, Kerner, Minton, Lindley, Briggle.
Eighth Circuit: Sanborn, Woodrough, Thomas, Johnsen, Riddick.
Since *Falbo*, the only contrary views have been expressed by Judges Biggs and Leahy, in the court below in No. 292.

[2] See, also, *United States* v. *Kauten*, 133 F. (2d) 703 (C. C. A. 2d, 1943); *United States* v. *Nelson*, 143 F. (2d) 584 (C. C. A. 2d, 1944); *United States* v. *Grieme*, 128 F. (2d) 811 (C. C. A. 3d, 1942); *United States* v. *Bowles*, 131 F.

reasoning in the *Fulbo* case that it greatly influenced the ruling of the Circuit Courts of Appeals as to the finality of local board orders and practically silenced whatever doubts theretofore may have been held by a few of the judges.

That it was during the crucial war years that the Act was thus interpreted and enforced and whereby the raising of the armed forces was saved from obstruction by not subjecting the Selective Process to judicial review when Congress forbade it, is of course no reason for misconstruing it now and relaxing the mode of administration which Congress deemed necessary for its effectiveness.

Congress not only so willed but those especially entrusted with formulating this legislation were fully aware of the judicial consequences of what it prescribed. This is shown by an authoritative report of the House Committee on Military Affairs when that Committee, the originator of the Act, was considering amendments on renewal of the Act. In its report in January, 1945, more than four years after the Act had been in operation, the Committee thus stated with accuracy and acquiescence the unanimity of judicial decisions in support of the respect by the judiciary of finality of the decisions of the draft board:

> "Under the Act as it is now written, registrants who are ordered to submit to induction into the armed forces may not refuse and defend such refusal in a criminal prosecution on the ground that their classifications were not given fair consideration by their boards. In order to obtain a judicial determination of such issues such registrants must first submit to induction and raise the issue by habeas corpus." H. R. Rep. No. 36, 79th Cong., 1st Sess. (1945) 4-5.

Congress wanted men to get into the army, not to litigate about getting in. And so it legislated on the assumption that it carefully devised a scheme for determining within the Selective Service System who was under duty to serve in the army would go awry too seldom to justify allowance of review by the courts.

(2d) 818 (C. C. A. 3d, 1942); *aff'd on other grounds*, 319 U. S. 33; *Goodrich* v. *United States*, 146 F. (2d) 265 (C. C. A. 5th, 1944); *United States* v. *Mroz*, 136 F. (2d) 221 (C. C. A. 7th, 1943); *United States* v. *Messersmith*, 138 F. (2d) 599 (C. C. A. 7th, 1943); *United States* v. *Daly*, 139 F. (2d) 7, (C. C. A. 7th, 1943); *United States* v. *Sauler*, 139 F. (2d) 173 (C. C. A. 7th, 1944); *United States* v. *Van Den Berg*, 139 F. (2d) 654 (C. C. A. 7th, 1944); *United States* v. *Fratrick*, 140 F. (2d) 5 (C. C. A. 7th, 1944); *United States* v. *Baxter*, 141 F. (2d) 359 (C. C. A. 7th, 1944); *United States* v. *Domres*, 142 F. (2d) 477, (C. C. A. 7th, 1944); *Bronemann* v. *United States*, 138 F. (2d) 333 (C. C. A. 8th, 1943); *Vag Bibber* v. *United States*, 151 F. (2d) 444 (C C. A. 8th, 1945).

If challenges to such determination by the Selective Service System were found baseless, as they were so found as a matter of experience in all but a negligible number of instances, the men having submitted to induction would be in the army, available as such, and not in prison for disobedience. Accordingly, Congress legislated to discourage obstruction and delay through dilatory court proceedings that would have been inevitable if judicial review of classification had been afforded during the war years.

The Court finds support for its reading that "final" does not mean final in the fact that not even at a time of our greatest national emergency was the writ of *habeas corpus* withdrawn as an alternate safeguard of personal liberty. See U. S. Constitution, Art. I, § 9, cl. 2; 1 Stat. 81; as amended, 28 U. S. C. § 451. But this general right to question the want of any legal foundation for any restraint is no measure of the issues that Congress left open for determination in a jury trial for disobedience of orders of the local draft boards made "final" by § 10(a)(2). Still less can it justify nullification of an explicit direction by Congress that such orders shall finally be determined within the framework of the Selective Service System. The issues in a *habeas corpus* proceeding are quickly joined, strictly limited and swiftly disposed of by a single judge. *Habeas corpus* proceedings are freed from the cumbersomeness which is a proper price to pay for the countervailing advantages of jury trials in appropriate situations. *Habeas corpus* "comes in from the outside," after regular proceedings formally defined by law have ended, "not in subordination to the proceedings, and although every form may have been preserved opens the inquiry whether they have been more than an empty shell." Holmes, J., dissenting in *Frank* v. *Mangum*, 237 U. S. 309, 346. *Habeas corpus*, after conviction, could not, of course, serve as a revisory process of the determination of classification which Congress lodged with finality in the draft boards. It could only be used in those hardly conceivable situations in which the proceedings before the draft board were a mere sham, "nothing but an empty form." *Ibid.* The availability in such a remote contingency of *habeas corpus* even after conviction is certainly no reason for deflecting and confusing a trial for the simple issue defined by § 11, namely, whether there was a wilful disregard of an order made by the Selective Service System, a system ranging from the local board to the President. It is one thing for the writ of *habeas corpus* to be available even though an administrative

action may otherwise be "final." See *e. g., Ng Fung Ho* v. *White*, 259 U. S. 276. It is quite another to disrupt a whole scheme of legislation under which millions of orders need promptly to be made and promptly to be respected and were therefore endowed with finality when sanctions for disobedience are sought.

Another ground for denying the evident purpose of Congress and disregarding the terms in which it expressed that purpose, is the suggestion that the validity of a classification goes to the "jurisdiction of the board" to issue an order to report for induction. But Congress did not say that "the decision of such local boards *when properly acting under their authority* shall be final." It said simply and unqualifiedly "the decisions of such local board shall be final." To be sure local boards are given power to act "within their respective jurisdictions." But all agencies upon which Congress confers authority have such authority impliedly only "within their respective jurisdiction." If that inherent limitation opened the door to review of their action in every enforcement proceeding despite provisions for finality, a provision of finality is meaningless.

This argument revives, if indeed it does not multiply, all the casuistic difficulties spawned by the doctrine of "jurisdictional fact." In view of the criticism which that doctrine, as sponsored by *Crowell* v. *Benson*, 285 U. S. 22, brought forth and of the attritions of that case through later decisions, one had supposed that the doctrine had earned a deserved repose. In withholding judicial review in the situations with which we are concerned, Congress was acting upon the conviction that it was dealing with matters which were more fittingly lodged in the exclusive discretion of the Selective Service System. Even in cases of far less exigency, Congress has chosen to act on such a view. See, *e. g., Gray* v. *Powell*, 314 U. S. 402; *Final Report of the Attorney General's Committee on Administrative Procedure* (1941) 86. But the short answer to any claim of reviewability drawn from the confinement of the local boards to action "within their respective jurisdictions" is that Congress was concerned with geography and not with law. Throughout this Act, the term "jurisdiction" has this geographic connotation. Is it reasonable to believe that Congress, bent on creating a vast armed force as quickly as possible, would in effect authorize every order of the Selective Service System to be reconsidered upon trials for disregard of such orders? The Act does not differentiate between

the power of the Board to allow exemptions and its power to grant deferments. The boards were invested with final authority to determine such matters subject only to such review as the Act authorizes. When Congress talked about a board acting within its jurisdiction it meant that a registrant had submitted his papers to a board either because he resided within its area or for some other relevant reason had registered with it.

For five years the circuit courts of appeals have construed § 10(a)(2) to mean that Congress established a system for organizing a vast citizen's army, the selection of which shall be in civilian boards with such control over them as the President may formulate. Designed obstruction of this means of meeting the great emergency was made an offense. That the Congress had the Constitutional power to do so needs no argument at this late date. See *Selective Draft Law Cases*, 245 U. S. 366; *Hirabayashi* v. *United States*, 320 U. S. 81, 93. And yet the Court today holds that eight circuit courts of appeals were wrong in reading the language of Congress as Congress wrote it, even though in doing so these courts were respectful of the considerations that moved Congress to write the Act as it did in order to raise that army. If this be so, not only were they wrong, but hundreds of convictions for disobedience of local board orders based on such regard for what Congress had written, were invalid.

II.

Since Congress has made final the decision of a local board on a claim of exemption, its decision as to exemption cannot be reopened upon a trial for disobedience of the board's order. But Congress also authorized an appeal from the local board to an appeal board and ultimately to the President. Congress has not given to the local board authority to decide when such statutory rights of appeal may be availed of, nor to make "final" unwarranted action by a board whereby such appeal is frustrated. *Cf. Tung* v. *United States*, 142 F. (2d) 919 (C. C. A. 1st, 1944). Accordingly, if a registrant does not obey an order of induction because the board has cut off the opportunity which the statutes gives him to appeal to higher authority, his obligation of obedience has not yet been fixed. Therefore he has not failed to discharge his obligation under the Act. The duty to obey is not merely a duty to obey an order of the draft board, but to obey such an order after it is no longer subject to review within the Selective Service System. "The decisions of such local draft boards shall

be final except where an appeal is authorized in accordance with such rules and regulations as the President may prescribe." Estep made the claim that he was effectively denied the right to appeal in addition to his inadmissible defense that the local board classified him improperly. He offered to prove that for all practical purposes the local board frustrated his right to have his case go to the appeal board, in violation of the board's duty under the Act and the Regulations. Estep should have been allowed to make proof of this claim by appropriate motion to be disposed of by the court. As in situations of comparable legal significance, a trial court may of course leave controverted issues of fact to the jury.

Another issue is presented by the petitioner in No. 66. The indictment alleges a failure to report for induction. While the petitioner did not report at the local board as he was ordered to do, he was forcibly taken to the induction center and went through the pre-induction physical examination but subsequently refused to submit to induction. An order to report for induction, as we said in *Billings* v. *Truesdell*, "includes a command to submit to induction." 321 U. S., at 557; *United States* v. *Collura*, 139 F. 2d 345 (C. C. A. 2d, 1943). There is basis for the petitioner's contention that the case was tried and submitted to the jury on the theory that he failed to show up at his local board. He substantially complied with that request by being at the induction center for examination. The trial court's charge is at best ambiguous. The court more than once apparently charged not that he did not submit to induction, but that he failed to appear voluntary at the induction points. "A conviction ought not to rest on an equivocal direction to the jury on a basic issue." *Bollenbach* v. *United States*, — U. S. — (January 28, 1946). On this ground the conviction is properly reversed.

Mr. Justice MURPHY, concurring.

To sustain the convictions of the two petitioners in these cases would require adherence to the proposition that a person may be criminally punished without ever being accorded the opportunity to prove that the prosecution is based upon an invalid administrative order. That is a proposition to which I cannot subscribe. It violates the most elementary and fundamental concepts of due process of law. It condemns a man without a full hearing and a consideration of all of his alleged defenses. To

sanction such a proposition is to place an indelible "blot upon our jurisprudence and civilization," *McVeigh* v. *United States*, 11 Wall. 259, 267, which cannot be justified by any appeal to patriotism or wartime exigencies.

The two courts below condemned the petitioners to prison for failing to obey orders to report for induction into the armed services, which had previously found them physically fit. Petitioners do not deny that they disobeyed these orders. They do claim, however, that there was a singular lack of procedural due process in the issuance of the induction orders and that the orders were therefore invalid—claims that must be assumed to be true for purposes of the cases before us. But the courts below, relying upon *Falbo* v. *United States*, 320 U. S. 549, forbade them from raising such claims. Under that view, it is irrelevant that the petitioners had never had a prior opportunity and will never have a future chance to test these claims; it is likewise immaterial that the claims, if proved, might completely absolve them from liability. Thus the stigma and penalties of criminality attach to one who wilfully disobeys an induction order which may be constitutionally invalid, or unauthorized by statute or regulation, or issued by mistake, or issued solely as the result of bias and prejudice. The mere statement of such a result is enough to condemn it.

The reasons advanced for thus depriving the petitioners of their liberty without due process of law are unmeritorious.

First. It is said that Congress so designed the Selective Training and Service Act of 1940 as to preclude courts from inquiring into the validity of an induction order during the course of a prosecution under § 11 for a wilful failure to obey such an order. But if that is true, the Act is unconstitutional in this respect. Before a person may be punished for violating an administrative order due process of law requires that the order be within the authority of the administrative agency and that it not be issued in such a way as to deprive the person of his constitutional rights. A court having jurisdiction to try such a case has a clear, inherent duty to inquire into these matters so that constitutional rights are not impaired or destroyed. Congress lacks any authority to negative this duty or to command a court to exercise criminal jurisdiction without regard to due process of law or other individual rights. To hold otherwise is to substitute illegal administrative discretion for constitutional safeguards. As this

Court has previously said: "Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority." *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 52. This principle has been applied many times in the past for the benefit of corporations. *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287, 289; *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, 486; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 432; *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210. I assume that an individual is entitled to no less respect.

But the Act need not be construed so as to reach this unconstitutional result. Nothing in the statute commands courts to shut their eyes to the Constitution or to deny a full and fair hearing when performing their functions under § 11 and we should be unwilling to imply such a prohibition. Once the judicial power is properly invoked under § 11, a court has unquestioned authority under the Constitution and the Judicial Code to accord a defendant due process of law and to inquire into alleged deprivations of constitutional rights despite the absence of any specific authority under the Act to that effect. A contrary result certainly is not dictated by the fact that the Act makes local board decisions "final," subject to the administrative appeal provisions. This merely determines the point of administrative finality, leaving to the courts the ultimate and historical duty of judging the validity of the "final" administrative orders which they are called upon to enforce with criminal sanctions, at least where no other method of judicial review is previously available.

A construction of the Act so as to insure due process of law and the protection of constitutional liberties is not an amendment to the Act. It is simply a recognized use of the interpretative process to achieve a just and constitutional result, coupled with a refusal to ascribe to Congress an unstated intention to cause deprivations of due process.

Second. It is urged that the purpose and scheme of the legislative program necessitate the foreclosure of a full hearing in a criminal proceeding under § 11. The urgent need of mobilizing the manpower of the nation for emergency purposes and the dire consequences of delay in that process are emphasized. From this premise it is argued that no "litigious interruption" in the selective process can be tolerated and that judicial inquiry into the valid-

ity of an induction order during the course of a criminal proceeding is a prime example of a "litigous interruption."

This argument, which was pressed so urgently and successfully in the *Falbo* case, conveniently ignores the realities of the situation. The selective process, in relation to the petitioners, was finally and completely interrupted at the time when they disobeyed the induction orders and subjected themselves to possible criminal liability. Any subsequent judicial review of the induction orders could have no possible effect upon the continuance of the selective process and could bear no earmarks of a "litigous interruption." Thus at the time of petitioners' trials the courts were confronted with accomplished interruptions rather than with a theory. A decision at that point to grant petitioners full hearings and to protect their constitutional rights would simply be a recognition of the fact that the Constitution protects the petitioners whenever their liberty is at stake, whatever may have been their motives in disobeying the orders.

It is alleged, of course, that to allow a full hearing in a criminal proceeding under this Act would be to extend an open invitation to all inductees to disobey their induction orders and litigate the validity of the orders in the subsequent trials. This is at best a poor excuse for stripping petitioners of their rights to due process of law. Moreover, the degree to which judicial review at this stage would encourage disobedience of induction orders lies in the realm of conjecture and cannot be demonstrated one way or the other by proof. But common sense would indicate that the number of those willing to undergo the risk of criminal punishment in order to test the validity of their induction orders with the attendant difficulties of proof, would be extremely small. Adherence to due process of law in criminal trials is unlikely to impede the war effort unduly. And should perchance the opposite be true there are undoubtedly legislative means of combating the problem.

Third. The further suggestion is made that the only judicial review of induction orders available is by means of habeas corpus proceedings brought subsequent to induction and that this remedy satisfies whatever judicial review may be required by the Constitution. I fully concur in the desirability and necessity of such a proceeding for those who have been inducted and who wish to test the validity of their induction orders.

It should be noted in passing, however, that this remedy may be quite illusory in many instances. It requires one first to enter the

armed forces and drop every vestige of civil rights. Military orders become the law of life and violations are met with summary court-martial procedure. No more drastic condition precedent to judicial review has ever been framed. Many persons with religious or conscientious scruples are unable to meet such a condition. But even if a person is inducted and a quest is made for a writ of habeas corpus, the outlook is often bleak. The proceeding must be brought in the jurisdiction in which the person is then detained by the military, which may be thousands of miles removed from his home, his friends, his counsel, his local board and the witnesses who can testify in his behalf. Should he overcome all these obstacles and possess enough money to proceed further, he still faces the possibility of being shifted by the military, at a moment's notice into another jurisdiction, thus making the proceeding moot. There is little assurance, moreover, that the military will treat his efforts to obtain the writ with sympathetic understanding. These practical difficulties may thus destroy whatever efficacy the remedy might otherwise have and cast considerable doubt on the assumption that habeas corpus proceedings necessarily guarantee due process of law to inductees.

But the availability of judicial review through habeas corpus proceedings misses the issue in this case. Such a proceeding may or may not provide an adequate remedy for the person who has been inducted. We are dealing here, however, with two persons who have not been inducted and who never will be inducted by force of the orders under attack. The writ of habeas corpus following induction is thus a completely non-existent remedy so far as these petitioners are concerned. It neither adds to nor detracts from the reasons for granting judicial review in these criminal proceedings.

If, as I believe, judicial review of some sort and at some time is required by the Constitution, then when and where can these petitioners secure that review? They have not had a prior chance to obtain review of the induction orders; nor will they subsequently be accorded the opportunity to test their contentions in court. It is no answer that they should have pursued different courses of action and secured writs of habeas corpus after induction. Due process of law is not dispensed on the basis of what people might have or should have done. The sole issue here is whether due process of law is to be granted now or never. The choice seems obvious.

By denying judicial review in this criminal proceeding, the courts below in effect said to each petitioner: You have disobeyed an allegedly illegal order for which you must be punished without the benefit of the judicial review required by the Constitution, although if you had obeyed the order you would have had all the judicial review necessary. I am at a loss to appreciate the logic or justice of that position. It denies due process of law to one who is charged with a crime and grants it to one who is obedient. It closes the door of the Constitution to a person whose liberty is at stake and whose need for due process of law is most acute. It short, it condemns a man without a fair hearing.

There is something basically wrong and unjust about a juridical system that sanctions the imprisonment of a man without ever according him the opportunity to claim that the charge made against him is illegal. I am not yet willing to conclude that we have such a system in this nation. Every fiber of the Constitution and every legal principle of justice and fairness indicates otherwise. The reports are filled with decisions affirming the right to a fair and full hearing, the opportunity to present every possible defense to a criminal charge and the chance at some point to challenge an administrative order before punishment. Those rudimentary concepts are ingrained in our legal framework and stand ready for use whenever life or liberty is in peril. The need for their application in this instance seems beyond dispute.

We must be cognizant of the fact that we are dealing here with a legislative measure born of the cataclysm of war, which necessitates many temporary restrictions on personal liberty and freedom. But the war power is not a blank check to be used in blind disregard of all the individual rights which we have struggled so long to recognize and preserve. It must be used with discretion and with a sense of proportionate values. In this instance it seems highly improbable that the war effort necessitates the destruction of the right of a person charged with a crime to obtain a complete review and consideration of his defense. As long as courts are open and functioning judicial review is not expendable.

All of the mobilization and all of the war effort will have been in vain if, when all is finished, we discover that in the process we have destroyed the very freedoms for which we fought. These cases represent a small but significant reflection of that fact. The reversal of the judgments below is therefore in line with the highest traditions of the Court.

Mr. Justice RUTLEDGE, concurring.

I join in the result in each case and in the Court's opinion for the reasons it sets forth. A further reason would force me to this result. In my judgment a contrary construction would invalidate the statute. I have no doubt that Congress could make administrative or executive action final in such matters as these in the sense of excluding all judicial review, excepting only what may be required by the Constitution in the absence of suspension of the writ of habeas corpus.[1] Cf. *Ex parte McCardle*, 6 Wall. 318; *Lockerty* v. *Phillips*, 319 U. S. 182; *Ng Fung Ho* v. *White*, 259 U. S. 276.

But as I do not think Congress can make it a crime punishable by the federal judicial power to violate an administrative order without affording an adequate opportunity to show its constitutional invalidity, cf. *Yakus* v. *United States*, 321 U. S. 414, 460, dissenting opinion,[2] so even more do I not think Congress can make criminal the disobedience to such an order allowing no opportunity whatever for showing its unconstitutionality. It is one thing to deny jurisdiction of the courts altogether, save in so far as the Constitution of its own force may preserve the jurisdiction. It is altogether different to confer jurisdiction for enforcement purposes, but in doing so to cut off all right of defense on constitutional grounds.

To sustain such a view not only would have the courts marching up the hill in the criminal case and down again in habeas corpus,[3]

[1] Under the Selective Draft Act of 1917, the civil courts were not called upon to enforce induction orders by criminal proceedings; for the receipt of such an order automatically subjected a draftee to military law and for disobedience thereof he was triable by a court-martial for desertion. See United States v. McIntyre, 4 F. 2d 823; Billings v. Truesdell, 321 U. S. 542, 545-546; cf. The Selective Draft Law cases, 245 U. S. 366.

[2] And see the authorities cited in the Court's opinion, 321 U. S. at 433, 435. Apart from the question of the validity of splitting a criminal trial into civil and highly attenuated criminal parts, the issue in the *Yakus* case related to the adequacy of the opportunity allowed for challenging the order's validity in the Emergency Court of Appeals. The ruling did not comprehend a situation where no opportunity is afforded prior to or during the trial.

[3] It is not necessary in these cases to determine whether Congress could confine the scope of review in the 'criminal cause,' on constitutional grounds, to those which might be asserted in habeas corpus after conviction. The very fact that ordinarily the permissible scope of such objections in the latter type of proceeding is considerably more restricted than in the former is additional reason for not accepting the Government's view that Congress

It would make the judicial function a rubber stamp in criminal cases for administrative or executive action. And it would close the trap which in *Billings* v. *Truesdell*, 321 U. S. 542, 558, we said would be set if *Falbo* v. *United States*, 320 U. S. 549, were construed to permit what it is now sought to have done to the petitioners.

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intended to allow review by habeas corpus but not by defense in the criminal trial.

That view, of course, rejects the idea that "final" in the statute "means final," that is, beyond judicial reach in any manner, as it likewise implicitly but necessarily denies that "within the jurisdiction"—of the local boards—is wholly geographical.

Mr. Justice BURTON, with whom Mr. Chief Justice STONE concurs, dissenting.

The CHIEF JUSTICE and I think that the judgment of conviction in these cases should be affirmed, for reasons stated in Part I of Mr. Justice FRANKFURTER's opinion.

We think that under § 10(a)(2) of the Selective Service Act, rightly construed, the registrant is required, on pain of criminal penalties, to obey the Local Board's order to report for induction into the armed forces, even though the Board's order or the action of the Appeal Board on which it is based, is erroneous. "In order to obtain a judicial determination of such issues such registrants must first submit to induction and raise the issues by habeas corpus." H. Rep. No. 36, 79th Cong., 1st Sess. (1945) 4. It follows that if the registrant is indicted for disobedience of the Board's order he cannot defend on the ground that the draft procedure has not been complied with or, if convicted, secure his release on that ground by resort to habeas corpus. The result is that such relief is open to him only if he obeys the order and submits to induction, when he is free to seek habeas corpus.

We do not find in the record of either case sufficient basis for reversal thereof on the grounds suggested in Part II of Mr. Justice FRANKFURTER's opinion.